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APPENDIX

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In the Supreme Court of the United States

OCTOBER TERM, 1970.

No. 1022

RELIANCE ELECTRIC COMPANY,
Petitioner,

v.

EMERSON ELECTRIC COMPANY,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

Petition for Writ of Certiorari
Filed February 9, 1971.
Certiorari Granted April 5, 1971.

TABLE OF CONTENTS.

Relevant Docket Entries in the District Court, Eastern District of Missouri, Eastern Division 1

Relevant Docket Entries in the U. S. Court of Appeals, Eighth Circuit 2

Complaint for Declaratory Judgment (Feb. 29, 1968) 3

Exhibit A—Letter dated December 28, 1967, from Abraham L. Pomerantz to Board of Directors of Reliance 7

Exhibit B—Letter dated February 13, 1968, from Jones, Day, Cockley & Reavis to Emerson 8

Answer and Counterclaim (Mar. 21, 1968) 10

Reply to Counterclaim (Mar. 28, 1968) 14

Stipulation (Feb. 3, 1969) 15

Stipulation Exhibits.

1.1. Offer to Purchase by Emerson of Dodge Common Stock dated May 22, 1967 19

1.2. Statement of Value 23

1.3. Letter of Transmittal 25

1.4. Instructions for Tender of Shares in Acceptance of Offer 29

1.5. Letter to Securities Dealers 31

2.1. Letter to W. R. Persons from Bryan, Cave, McPheeters & McRoberts dated June 26, 1967 33

2.2. Letter to W. R. Persons from Bryan, Cave, McPheeters & McRoberts dated July 7, 1967 39

3.1. Letter to Goldman, Sachs & Company from G. W. Mellicker dated August 29, 1967 41

4.1. Purchase Agreement ---- 43
4.2. Letter to Dodge from Emerson dated September 11, 1967 ---- 46
4.3. Opinion of Counsel dated September 11, 1967 ---- 47
4.4. Letter to Emerson from Reliance and Dodge dated September 11, 1967 ---- 48
4.5. Letter to Dodge from Bryan, Cave, McPheeters & McRoberts dated September 13, 1967 ---- 49
4.6. Letter to Emerson from Hopkins, Sutter, Owen, Mulroy, Wentz & Davis dated September 13, 1967 ---- 51

Transcript of Proceedings (Feb. 3, 1969) ---- 52
Appearances ---- 52
Colloquy ---- 52
Opening Statement in Behalf of Plaintiff ---- 53
Opening Statement in Behalf of Defendant ---- 55
Plaintiff's Evidence:
W. R. Persons, Direct Examination ---- 56
Colloquy ---- 67

Plaintiff's Exhibits.

1. Telegram 3-22-67 ---- 69
3. Offer to Purchase 5/24/67 ---- 70
4. Extension of Offer to Purchase 6/12/67 ---- 72
5. St. Louis Post-Dispatch Clip 5/23/67 ---- 74
6. Wall Street Journal Clip 5/23/67 ---- 75
7. Dodge Letter to Shareholders 5/24/67 ---- 76
8. MacLean Letter to Dodge Shareholders 5/25/67 ---- 78

9. St. Louis Post-Dispatch Clip 5/26/67 80
10. Verified Complaint and Order, Dodge Manufacturing Corporation v. Emerson Electric Co., No. 4023 (U.S.D.C., N.D. Ind.) 81
11. MacLean Letter to Dodge Shareholders 5/27/67 98
12. MacLean Letter to Dodge Shareholders 5/29/67 99
14. MacLean Letter to Dodge Shareholders 6/12/67 101
15. Letter to MacLean from Persons 6/17/67 102
16. Wall Street Journal Clip 6/19/67 104
17. Letter to Persons from MacLean 6/20/67 107
18. Letter to MacLean from Persons 6/21/67 108
19. Letter to Persons from McLean 6/22/67 110
20. Complaint and Order, State ex rel. Emerson Electric Co. v. Dodge Manufacturing Corporation, No. D-3655 (St. Joseph Superior Court) 113
21. Letter to MacLean from Persons 6/29/67 122
23. Letter to Persons from MacLean 6/30/67 124
24. Emerson Letter to Dodge Shareholders 7/13/67 125
25. Complaint, Emerson Electric Co. v. Dodge Manufacturing Corporation, No. 4050 (U.S.D.C., N.D. Ind.) 127
26. MacLean Letter to Dodge Shareholders 7/24/67 130
27. Emerson Proxy Statement and Letter to Dodge Shareholders 7/31/67 132
28. MacLean Letter to Dodge Shareholders 8/4/67 146

29. Emerson Letter to Dodge Shareholders 8/4/67 ---------- 149
30. Emerson Letter to Dodge Shareholders 8/10/67 ---------- 151
31. Emerson Letter to Dodge Shareholders 8/16/67 ---------- 153
33. Reliance Proxy Statement re Toledo Scale Corporation ---------- 155

Memorandum Opinion of the District Court (Sept. 18, 1969) ---------- 157
Interlocutory Declaratory Judgment of the District Court (Oct. 9, 1969) ---------- 165
Petition for Permission to Take an Appeal (Oct. 20, 1969) ---------- 167
Order Granting Petition for Leave to Appeal (Nov. 6, 1969) ---------- 169
Opinion of the Court of Appeals (Nov. 12, 1970) -- 170
Judgment of the Court of Appeals (Nov. 12, 1970) 183

Civil Action No. 68 C 87 (3).

In the United States District Court

FOR THE EASTERN DISTRICT OF MISSOURI,
EASTERN DIVISION.

EMERSON ELECTRIC CO.,
Plaintiff,

v.

RELIANCE ELECTRIC COMPANY,
Defendant.

RELEVANT DOCKET ENTRIES.

1968

Feb. 29. Complaint filed and summons issued.
Mar. 21. Answer and counterclaim filed.
Mar. 28. Plff's reply to counterclaim filed.

1969

Feb. 3. Final hearing of cause before the Court on issue of liability only commenced and concluded. Stipulation filed by the parties.

Sept. 18. Memorandum Opinion filed holding that Emerson Electric Company is liable to Reliance Electric Company as the successor in interest to Dodge Manufacturing Corp., for the net profits realized by Emerson from the sale of all its 152,282 shares of Dodge stock, and directing counsel for Reliance submit a form of interlocutory declaratory judgment in accordance therewith; said Memorandum Opinion constituting the Court's findings of fact and conclusions of law on the issue of liability.

Oct. 9. Interlocutory declaratory judgment, as approved by the parties, filed and entered decreeing Emerson Electric Company is liable to deft Reliance Electric Company for the net profits realized by plff from the sales of 152,282 shares of stock of Dodge Manufacturing Company on August 28 and September 13, 1967; and further ordering that this matter be certified under Title 28 USCA, Sec. 1292(b) and that all proceedings in this cause be stayed pending the final action of the USCA for the 8th Circuit.

No. 20014.

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT.

EMERSON ELECTRIC CO.,
Appellant,

vs.

RELIANCE ELECTRIC COMPANY,
Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI.

RELEVANT DOCKET ENTRIES.

1969

Oct. 20. Petition for permission to take an appeal from an Interlocutory Order pursuant to 28 U.S.C., Sec. 1292(b).

Oct. 30. Answer in opposition to Petition for permission to take appeal.

Nov. 6. Order: Petition for leave to take interlocutory appeal granted.

1970

Sept. 15. Argued and submitted to Judges Gibson, Lay and Hunter. Arg. com. by R. H. McRoberts for applnt; cont. by Thomas P. Mulligan for appellee.

Nov. 12. Opinion by Judge Hunter.

Nov. 12. Judgment: Cause remanded to Dist. Ct. with directions to proceed in accordance with views expressed in opinion.

Dec. 11. Mandate issued.

1971

Feb. 11. Notice of filing of Petition for Cert. in Sup. Court.

IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF MISSOURI, EASTERN DIVISION.

(Title omitted in printing.)

COMPLAINT FOR DECLARATORY JUDGMENT.

(Filed February 29, 1968.)

Plaintiff, for its complaint herein, alleges as follows:

1. Plaintiff is a Missouri corporation and has its principal place of business in Missouri.

2. Defendant is an Ohio corporation and has its principal place of business in Ohio but is doing business in Missouri and has an office in the County of St. Louis, Missouri.

3. The jurisdiction of this Court rests on diversity of citizenship and amount.

4. The amount in controversy, exclusive of interest and costs, exceeds $10,000. This is an action for declaratory judgment as authorized by Section 2201, Title 28 of the United States Code (28 U. S. C. A. § 2201) and is brought because there is an actual controversy now existing between the parties hereto.

5. Prior to June 16, 1967, plaintiff owned no shares of common stock of Dodge Manufacturing Corporation, an Indiana corporation ("Dodge"). On or about June 16, 1967 plaintiff purchased 152,282 shares of the outstanding common stock of Dodge, pursuant to an invitation for tenders at a price of $63 per share, with a commission of 90¢ per share payable to brokers. These shares constituted more than 10 per cent of the then outstanding shares of common stock of Dodge. At no time thereafter did plaintiff acquire any additional shares of such stock of Dodge.

6. On or about August 28, 1967, Emerson sold 37,000 of such shares on the New York Stock Exchange at a gross price of $68 per share.

7. On or about September 13, 1967 plaintiff sold the 115,282 shares of such common stock then remaining in its

hands to Dodge at a gross price of $69 per share. At that time, plaintiff was not the owner of 10 per cent or more of the then outstanding shares of common stock of Dodge.

8. On or about September 30, 1967, Dodge merged into defendant Reliance Electric Company, an Ohio corporation ("Reliance"), and the corporate existence of Dodge came to an end.

9. Plaintiff realized a net profit on the sale of the 37,000 shares of such common stock, described in paragraph 7 hereinabove, of more than $10,000.

10. Plaintiff realized a net profit on the sale of the 115,282 shares of such common stock, described in paragraph 7 hereinabove, of more than $10,000.

11. By letter dated December 28, 1967 Mr. Abraham L. Pomerantz wrote to the Board of Directors of Reliance demanding that Reliance take appropriate action against plaintiff to recover the profit alleged to have been made on a sale of 152,000 shares of the common stock of Dodge back to Dodge, and advising that if Reliance should not act he would bring an action on Reliance's behalf against Emerson, and would not sue Reliance's directors. A copy of said letter is attached hereto, marked Exhibit "A," and incorporated herein.

12. By letter dated February 13, 1968, and received by plaintiff on or about February 16, 1968, counsel for Reliance made a demand upon plaintiff that the full amount of the plaintiff's profits on the sale described in paragraph 6 hereinabove be paid to Reliance under the provisions of Section 16(b) of the Securities Exchange Act of 1934, 15 U. S. C. A. Section 378aa. In said letter, counsel for Reliance state that, in their opinion, the plaintiff's profits on the sale described in paragraph 7 hereinabove are not recoverable by Reliance inasmuch as plaintiff was not at the time of such sale the owner of 10 per cent or more of the outstanding stock of Dodge. However, in said letter counsel state that counsel (a) reserve the right to reconsider this opinion "if developments in the law or other factors should cause a change in our present view" and (b) "spe-

cifically reserve the right to assert a claim with respect to profits made on such sale if litigation should develop in connection with this matter." A copy of said letter is attached hereto, marked Exhibit "B," and incorporated herein.

13. Section 16(b) of the Securities Exchange Act of 1934 provides, in part:

> "* * * any profit realized by [the beneficial owner of more than 10% of any class of equity security of an issuer which is registered on a national securities exchange] from any purchase and sale or any sale and purchase of any equity security of such issuer . . . within any period of less than six months . . . shall inure to and be recoverable by the issuer * * *"

14. Plaintiff is advised by its counsel that in their opinion, based upon cases from other judicial Circuits, the provisions of Section 16(b) should not apply to the sale described in paragraph 6 hereinabove even though at the time of such sale plaintiff was the owner of more than 10 per cent of the then outstanding shares of common stock of Dodge. However, plaintiff is further advised by its counsel, and believes, that there has been no final judicial determination in this judicial Circuit of the applicability of Section 16(b) to the profits realized on the sale of stock whose acquisition initially caused the seller to become the holder of more than 10 per cent of such outstanding shares. Accordingly, plaintiff is advised by its counsel, and believes, that in view of the demands set forth in the originals of Exhibits "A" and "B" hereto plaintiff requires the determination of this Court with respect to its liability to Reliance, if any, for the amount of such profits.

15. Plaintiff is also advised by its counsel that in their opinion the provisions of Section 16(b) of the Securities Exchange Act of 1934 do not apply to the sale described in paragraph 7 hereinabove for the reason that at the time of such sale plaintiff was not the owner of 10 per cent or more of the then outstanding shares of common stock of Dodge. However, plaintiff is further advised by its coun-

sel, that by reason of the potential claims suggested in, and threatened by, the originals of Exhibits "A" and "B" hereto for the amount of the profits of such sale plaintiff requires the determination of this Court with respect to its liability to Reliance, if any, for the amount of such profits.

16. By reason of the facts hereinabove set forth, plaintiff seeks the advice, instructions, directions and declaratory judgment of this Court with respect to its liability to Reliance, if any, for the amount of profits from the sales described in paragraphs 6 and 7 of the within Complaint.

WHEREFORE, plaintiff prays

(1) that by its decree herein the Court determine and declare the rights of the parties and the liability, if any, of plaintiff to Reliance for the amounts of the profits on either or both of the transactions described hereinabove;

(2) that the Court give such further relief by way of declarations of the rights of the parties or otherwise as the Court may deem just and proper; and

(3) that the Court allow plaintiff its costs herein.

R. H. MCROBERTS,
R. H. MCROBERTS, JR.,
Attorneys for Plaintiff,
1600 Boatmen's Bank Bldg.,
St. Louis, Missouri 63102.

BRYAN, CAVE, MCPHEETERS & MCROBERTS,
Of Counsel.

EXHIBIT "A."

(Letterhead of Pomerantz Levy Haudek & Block,
295 Madison Avenue, New York, N. Y. 10017)

December 28, 1967

The Board of Directors
Reliance Electric & Engineering Company
24701 Euclid Avenue
Cleveland, Ohio

Dear Sirs:

We are writing to you on behalf of our client, Mr. Harry Lewis, who has been a shareholder of Reliance Electric & Engineering Co. for many years.

According to our information, during May and June, 1967, Emerson Electric Co. purchased 152,000 shares of the common stock of Dodge Manufacturing Corporation at a price of $63 per share pursuant to a tender offer. Emerson sold all of these shares back to Dodge in August and September of 1967 (within six months of their purchase) at a time when the market price of the Dodge shares on the New York Stock Exchange was approximately $73 per share. Since Emerson owned more than 10% of Dodge's outstanding common stock, the profit that Emerson made on its purchase and sale of the Dodge stock inures to Dodge pursuant to Section 16(b) of the Securities Exchange Act of 1934. Since Dodge has been merged into Reliance, Reliance now has the obligation of recovering from Emerson this short-swing profit.

We are writing this letter, pursuant to Section 16 (b), to demand that Reliance take appropriate action against Emerson to recover the aforesaid profit. If Reliance does not act, we have been instructed by our client to institute proceedings on Reliance's behalf.

We trust that you will advise us promptly as to whether Reliance intends to act. If we are wrong in our understanding of the facts, we would appreciate it if you would so inform us because we have no wish to involve Reliance in a litigation that is not meritorious. I might add that if we do go forward, we would bring our action

on Reliance's behalf against Emerson only and would not sue Reliance's directors.

Yours truly,

/s/ A. L. POMERANTZ
Abraham L. Pomerantz

ALP:cer

EXHIBIT "B."

(Letterhead of Jones, Day, Cockley & Reavis,
1750 Union Commerce Building, Cleveland, Ohio 44115)

February 13, 1968

Emerson Electric Company
8100 Florissant Avenue
St. Louis, Missouri 63136

Gentlemen: Attention: Mr. McRoberts

On behalf of our client, Reliance Electric, we are writing to inform you that Reliance has authorized and directed us to take all appropriate steps to recover any profits which may have been made by Emerson Electric Company in connection with its purchase and sale of certain shares of Common Stock of Dodge Manufacturing Corporation.

On the basis of information available to us, we understand the relevant facts are that on or about June 16, 1967 Emerson purchased 152,282 shares of common Stock of Dodge pursuant to an invitation for tenders at a price of $63, with a commission of 90¢ payable to brokers. Those shares constituted more than 10% of the then outstanding shares of Common Stock of Dodge. On or about August 28, Emerson sold 37,000 of such shares on the New York Stock Exchange at a price of $68 per share. We believe that the profits made on such sale by Emerson are legally recoverable by Reliance, as successor by

merger to Dodge, under the provisions of Section 16 of the Securities Exchange Act of 1934, and we have advised Reliance that it should take all reasonable action to recover such profits for the Company.

In view of the foregoing, we hereby demand, on behalf of our client, that the full amount of such profits be paid to Reliance. The exact amount of such recovery will depend in part upon the costs, allowable under Section 16, which Emerson is able to establish were directly incurred by it in connection with the purchase and sale of such shares. The burden of establishing such costs rests with Emerson and until that is done we have no alternative but to demand the full amount of such profits.

On or about September 13, 1967 Emerson sold 115,282 shares of Dodge stock to Dodge at a price of $69 per share. We have previously stated that, in our opinion, the profits which Emerson may have made on such sale are not recoverable by Reliance, since Emerson was not then the owner of 10% or more of the outstanding stock of Dodge. Nothing has developed to change that opinion. Accordingly, our demand does not relate to the profits realized by Emerson on such sale. This statement should in no sense be construed as a waiver by Reliance of whatever rights it may have to recover any such profits and naturally we reserve the right to reconsider this matter if developments in the law or other factors should cause a change in our present view. We specifically reserve the right to assert a claim with respect to the profits made on such sale if litigation should develop in connection with this matter.

We would appreciate your advising us promptly of the position you intend to take in response to the demands outlined in this letter. Your reply will, of course, affect the decision as to what further action will be taken by Reliance.

Very truly yours,

/s/ Jones, Day, Cockley & Reavis
Jones, Day, Cockley & Reavis

IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF MISSOURI, EASTERN DIVISION.

(Title omitted in printing.)

ANSWER AND COUNTERCLAIM.

(Filed March 21, 1968.)

ANSWER.

For its answer to plaintiff's complaint, defendant (whose correct corporate name is The Reliance Electric and Engineering Company) admits and denies as follows:

1. Admits the allegations of paragraph 1.

2. Admits the allegations of paragraph 2.

3. Denies the allegations of paragraph 3, and avers that the jurisdiction of this Court rests on Section 27 of the Securities Exchange Act of 1934 (15 U. S. C. § 78aa).

4. Admits the allegations of paragraph 4.

5. Admits that on or about June 16, 1967 plaintiff purchased 152,282 shares of the outstanding common stock of Dodge Manufacturing Corporation, an Indiana corporation ("Dodge"), pursuant to an invitation for tenders at a price of $63.00 per share, which shares constituted more than 10% of the then outstanding shares of common stock of Dodge. Except as admitted defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 5.

6. Admits the allegations of paragraph 6, and avers that said sale of August 28, 1967 constituted one transaction with the sale of September 13, 1967 referred to in paragraph 7.

7. Admits that on or about September 13, 1967, plaintiff sold 115,282 shares of common stock of Dodge to Dodge at a price of $69.00 per share; avers that said sale of September 13, 1967 constituted one transaction with the sale of August 28, 1967, referred to in paragraph 6;

and, except as admitted, denies the allegations of paragraph 7.

8. Admits the allegations of paragraph 8.

9. and 10. Admits the allegations of paragraphs 9 and 10, and avers that the profit realized by plaintiff on the transaction of sale of 152,282 shares of common stock of Dodge which took place on August 28, 1967 and September 13, 1967 amounted to $876,692, plus a dividend of 45¢ a share received by plaintiff in respect of such shares, less such expenses as may be allowed by law.

11. Admits, as to paragraph 11, that defendant received a letter dated December 28, 1967, copy of which is attached to the complaint as Exhibit A.

12. Admits, as to paragraph 12, that counsel for defendant wrote and plaintiff received a letter dated February 13, 1968, copy of which is attached to the complaint as Exhibit B.

13. Admits the allegations of paragraph 13.

14. and 15. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 14 and 15 except that defendant avers that the provisions of said Section 16(b) should and do apply to the transaction described in paragraphs 6 and 7 of plaintiff's complaint.

16. Defendant joins in plaintiff's request for a declaration by this Court as to the liability of plaintiff to defendant and for a determination as to the amount of profit recoverable by defendant on account of said transaction of sale.

Wherefore, having fully answered, defendant prays:

(1) that the Court declare the rights of the parties and the liability of plaintiff to defendant for the amount of the profit on the transaction described herein;

(2) that the Court grant such further relief against plaintiff as may be necessary or proper; and

(3) that the Court allow defendant its costs herein.

COUNTERCLAIM.

For its counterclaim herein defendant (whose correct corporate name is The Reliance Electric and Engineering Company) alleges as follows:

1. Jurisdiction of this Court is based upon Section 27 of the Securities Exchange Act of 1934 (15 U. S. C. § 78aa).

2. On or about June 16, 1967 plaintiff purchased 152,282 shares of the outstanding common stock of Dodge Manufacturing Corporation, an Indiana corporation ("Dodge") at a price of $63.00 per share, which shares constituted more than 10% of the outstanding shares of common stock of Dodge. The outstanding shares of common stock of Dodge were then listed on the New York Stock Exchange.

3. On or about August 15, 1967 Dodge paid a dividend of 45¢ a share on its common stock to holders of record as of July 27, 1967, including plaintiff.

4. Plaintiff sold 152,282 shares of common stock of Dodge in a transaction which took place on or about August 28 and September 13, 1967, at a price of $68.00 per share as to 37,000 shares and $69.00 per share as to 115,282 shares.

5. On or about September 29, 1967, Dodge, the issuer of such shares, was merged into defendant, and defendant succeeded to the rights and powers of Dodge pursuant to law.

6. The profit realized by plaintiff from the transaction referred to in paragraph 4 above is recoverable by defendant pursuant to the provisions of Section 16(b) of the Securities Act of 1934 (15 U. S. C. § 78p (b)).

7. Plaintiff realized a profit on the purchase and sale of Dodge shares hereinabove described in the amount of $876,692.00, plus said dividend of 45¢ per share in the total amount of $68,526.90, less such expenses as may be allowed by law.

Wherefore, defendant prays for judgment against plaintiff on its counterclaim in the amount of $945,218.90, less such of plaintiff's expenses as may be allowed by law, together with interest and defendant's costs herein.

KENNETH TEASDALE
Railway Exchange Building
611 Olive Street
St. Louis, Missouri 63101

THOMAS P. MULLIGAN
1750 Union Commerce Building
Cleveland, Ohio 44115
Attorneys for Defendant

Of Counsel:

ARMSTRONG, TEASDALE, KRAMER & VAUGHAN
Railway Exchange Building
611 Olive Street
St. Louis, Missouri 63101

JONES, DAY, COCKLEY & REAVIS
1750 Union Commerce Building
Cleveland, Ohio 44115

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI, EASTERN DIVISION.

(Title omitted in printing.)

REPLY TO COUNTERCLAIM.

(Filed March 28, 1968.)

Comes now plaintiff in the above entitled cause (whose correct corporate name is "Emerson Electric Co."), and for reply to defendant's counterclaim filed herein, states as follows:

1. It admits the allegations in Paragraph 1 of said counterclaim.

2. It admits the allegations in Paragraph 2 of said counterclaim.

3. It admits the allegations in Paragraph 3 of said counterclaim.

4. It admits that it sold a total of 152,282 shares of common stock of Dodge Manufacturing Corporation, an Indiana corporation (Dodge), but denies that said shares were sold in a transaction, and states, instead, that said shares were sold in two separate and distinct transactions, one of 37,000 shares on or about August 28, 1967, at a price of $68.00 per share, and one on or about September 13, 1967, of 115,282 shares at a price of $69.00 per share.

5. It admits the allegations in Paragraph 5 of said counterclaim.

6. It denies the allegations in Paragraph 6 of said counterclaim.

7. It admits that it realized a profit on the purchase and each of the separate sales of common stock of Dodge, as aforesaid, but denies each and every other allegation in said Paragraph 7 contained.

WHEREFORE, plaintiff prays for judgment in its favor on said counterclaim, dismissing the same at defendant's costs.

R. H. MCROBERTS
R. H. MCROBERTS, JR.
Attorneys for Plaintiff

BRYAN, CAVE, MCPHEETERS & MCROBERTS
Of Counsel

(Certificate of Service omitted in printing.)

IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF MISSOURI, EASTERN DIVISION.

(Title omitted in printing.)

STIPULATION.

(Filed February 3, 1969.)

Now come the parties hereto, and stipulate as follows:

PURCHASE OF DODGE SHARES.

1. Prior to June 16, 1967, plaintiff Emerson Electric Company, a Missouri corporation ("Emerson"), owned no shares of common stock of Dodge Manufacturing Corporation, an Indiana Corporation ("Dodge").

2. On or about May 22, 1967, Emerson made an offer to purchase common stock of Dodge. Attached hereto as Exhibit 1.1 is the offer of Emerson to the holders of common stock of Dodge dated May 22, 1967; attached hereto as Exhibit 1.2 is a Statement of Value of G. H. Walker & Co. dated May 22, 1967; attached hereto as Exhibit 1.3 is the form of Letter of Transmittal provided by Emerson for use in connection with the tender offer; attached hereto as Exhibit 1.4 is a copy of Instructions for Tender of Shares in Acceptance of Offer, provided by Emerson; and attached hereto as Exhibit 1.5 is a letter of G. H. Walker & Co. and Scherck, Stein & Franc, Inc. to securities dealers dated May 22, 1967.

3. On or about June 2, 1967, Emerson extended the time of termination of the tender offer to 5:00 p.m. Chicago time June 16, 1967.

4. At 5:00 p. m., June 16, 1967, Emerson elected to purchase all of the shares tendered at that time, and accordingly did then purchase 152,282 shares of common stock of Dodge.

DISPOSITION BY EMERSON OF DODGE STOCK.

5. On or about June 26, 1967, Bryan, Cave, McPheeters & McRoberts, general counsel for Emerson,

sent to Mr. W. R. Persons, Chairman of the Board of Directors of Emerson, a letter under date of June 26, 1967, a copy of which is attached hereto as Exhibit 2.1.

6. On or about July 7, 1967, Bryan, Cave, McPheeters & McRoberts sent a letter to Mr. Persons under date of July 7, 1967, a copy of which is attached hereto as Exhibit 2.2.

SALE OF 37,000 SHARES.

7. After the Dodge shareholders meeting on August 22, 1967, and several days prior to August 28, 1967, by telephone conversations, Mr. W. L. Davis, President of Emerson, discussed with Mr. L. J. Tenanbaum of Goldman, Sachs & Co., investment bankers ("Goldman, Sachs"), the sale by Emerson and purchase by Goldman, Sachs of 37,000 shares of common stock of Dodge then held by Emerson. Prior to such conversations Emerson had neither made an offer to sell Dodge shares nor received a formal offer to buy Dodge shares.

8. On August 28, 1967, by telephone conversation between Mr. Davis and Mr. Tenanbaum, Emerson agreed to sell and Goldman, Sachs agreed to buy 37,000 shares of common stock of Dodge. Delivery of the shares so sold was made by Mr. G. W. Mellicker, Treasurer of Emerson, to the St. Louis office of Goldman, Sachs on August 29, 1967; a copy of Mr. Mellicker's letter to such office dated August 29, 1967 is attached hereto as Exhibit 3.1.

9. Payment was made by Goldman, Sachs to Emerson's account at Marine Midland Grace Trust Co. of New York on September 1, 1967 in Federal Reserve Funds.

SALE OF 115,282 SHARES.

10. On August 29, 1967, by telephone conversation placed by Mr. N. P. Rose, of Jones, Day, Cockley & Reavis, counsel for Reliance, to Mr. R. H. McRoberts, of Bryan, Cave, McPheeters and McRoberts, counsel for Emerson, Reliance, on behalf of Dodge, initiated discussion with respect to the purchase of the remaining 115,282 shares

of common stock of Dodge from Emerson. Prior to such time Emerson had not offered to sell any of such 115,282 shares.

11. On September 5, 1967, by telephone conversation placed by Mr. McRoberts to Mr. Rose, Emerson agreed to sell and Dodge agreed to purchase the 115,282 shares of common stock of Dodge held by Emerson, subject to the negotiation of a definitive agreement of sale.

12. Thereafter, negotiations toward such an agreement ensued, and on September 11, 1967, a Purchase Agreement was entered into between Dodge and Emerson, a copy of which is set forth in Exhibit 4.1 hereto. At the time of the execution of the Purchase Agreement between Dodge and Emerson, there were delivered by Emerson to Dodge a letter of its President, W. L. Davis, dated September 11, 1967, a copy of which is set forth as Exhibit 4.2 hereto, and an opinion of counsel dated September 11, 1967, a copy of which is set forth as Exhibit 4.3 hereto. At such time there was delivered by counsel for Dodge and counsel for Reliance to Emerson a letter relating to intentions to assert claims under Section 16(b) dated September 11, 1967, a copy of which is set forth as Exhibit 4.4 hereto.

13. The closing under the aforesaid Purchase Agreement took place according to its terms on September 13, 1967, at which closing opinions of counsel for Emerson and counsel for Dodge, set forth as Exhibits 4.5 and 4.6 hereto respectively, were exchanged.

OUTSTANDING SHARES OF DODGE.

14. At the pertinent times, the number of outstanding and treasury shares of Dodge were as follows:

	Shares of Common Stock of Dodge		
Date	Outstanding	Held in Treasury	Total
June 16, 1967	1,151,712	732	1,152,444
August 11, 1967 through September 24, 1967	1,157,437	732	1,158,169

PROFIT.

15. Emerson realized profits from the purchase and sales of 37,000 shares and 115,282 shares of Dodge, respectively.

JURISDICTION.

16. On September 29, 1967, Dodge merged into defendant The Reliance Electric & Engineering Company.

17. At all times between May 1, 1967 and September 29, 1967, the common stock of Dodge was registered pursuant to Section 12 of the Securities Exchange Act of 1934.

Respectfully submitted,

R. H. MCROBERTS,
THOMAS C. WALSH,
Attorneys for Plaintiff.

Of Counsel:

BRYAN, CAVE, MCPHEETERS & MCROBERTS

KENNETH TEASDALE,
THOMAS P. MULLIGAN,
Attorneys for Defendant.

Of Counsel:

ARMSTRONG, TEASDALE, KRAMER & VAUGHAN,
JONES, DAY, COCKLEY & REAVIS.

STIPULATION EXHIBIT 1.1.

EMERSON ELECTRIC CO.
8100 Florissant Avenue
St. Louis, Missouri 63136

Offer to Purchase 550,000 Shares of Common Stock
of
Dodge Manufacturing Corporation
at $63 Per Share

May 22, 1967

To the Holders of Common Stock of
Dodge Manufacturing Corporation

Emerson Electric Co., a Missouri corporation (herein called the "Purchaser"), hereby invites tenders of 550,000 shares of Common Stock of Dodge Manufacturing Corporation, an Indiana corporation (the "Corporation"), for purchase by the Purchaser at $63 per share net to tendering shareholders, payable in cash, all upon and subject to the terms and conditions set forth in this Offer Letter and in the Letter of Transmittal which is enclosed herewith. The Purchaser will pay transfer taxes with respect to such purchases and will also pay a commission to soliciting dealers.

This offer terminates at 5:00 P. M., Chicago time, on June 2, 1967 except that the Purchaser may make one or more extensions of the period of time this offer shall remain open, provided that the Purchaser may sooner terminate any such extension at its sole discretion. Public notice of any extension of this offer or any early termination of such extension will be given.

If the Corporation should, subsequent to the commencement of this offer, declare any dividend or distribution payable to stockholders, the gross amount thereof shall be remitted by the tendering shareholder to the Co-Depositary for the account of the Purchaser; pending assurance of such remittance, the Purchaser may deduct from the purchase price the amount or value of any such dividend or distribution.

The Purchaser will purchase all shares up to 550,000 shares tendered pursuant to this offer before this offer expires, provided at least 460,000 shares are tendered. If less than 460,000 shares are tendered, the Purchaser shall not be obligated to purchase any shares but may elect to purchase all or a portion of the shares tendered. If more than 550,000 shares are tendered, the Purchaser shall not be obligated to purchase the excess shares but may elect to purchase all or a portion of the excess shares tendered. If less than all shares tendered up to June 2, 1967 are purchased, they will be purchased on a pro rata basis with appropriate adjustments to avoid fractional shares. If the offer is extended, and less than all shares tendered during the extended period are purchased, such shares will be purchased in the order in which they are received by the Co-Depositaries. The stock certificates representing shares tendered which are not accepted will be returned without expense to the tendering shareholders. Payment for all shares purchased pursuant to the offer will be made as soon as practicable after the expiration of the tender offer.

A form of Letter of Transmittal to be used in accepting this offer is enclosed. All tenders are irrevocable until the shares are purchased or returned, regardless of whether the offer is extended as herein provided. *To be eligible for consideration, all tenders must be received by a Co-Depositary before the expiration of this offer.* If you wish to accept the offer, you should either:

(1) send your stock certificate(s) in proper form for transfer and the enclosed Letter of Transmittal properly filled out to one of the following Co-Depositaries: First National Bank of Chicago, 38 South Dearborn Street, Chicago, Illinois 60690; Marine Midland Grace Trust Co. of New York, 140 Broadway, New York, New York 10015; or St. Louis Union Trust Co., 510 Locust Street, St. Louis, Missouri 63101; or

(2) request your broker or bank to effect the transaction for you.

In the event that you elect to send in your Letter of Transmittal and certificate(s) directly, the use of insured registered mail, return receipt requested, is recommended as a precaution against the loss of stock certificates, the risk of which remains on you until the certificates are received by the Co-Depositary. If you do not live near any Co-Depositary the use of air mail is also recommended. All questions as to the validity, form, eligibility (including time of receipt) and acceptability of any tender of shares will be determined by the recipient Co-Depositary in its sole discretion.

If it should be impossible to deposit stock certificates immediately, tenders may be accepted if the Letters of Transmittal received by a Co-Depositary prior to the expiration of this offer are executed with proper signatures and contain a guarantee by a member firm of the New York or American Stock Exchange or a commercial bank or trust company having an office or correspondent in the cities of Chicago or New York that certificates for the shares being tendered will be deposited within 8 business days after dispatch of notice by the recipient Co-Depositary to such member, bank or trust company that your tender has been accepted.

The high and low prices of the Corporation's Common Stock on the Midwest Stock Exchange and the New York Stock Exchange for the period 1964-1966, as reported by the National Quotation Bureau, Incorporated, are as follows:

Period	High	Low
1964	29⅞	24¾
1965	36⅞	26
1966	41	31⅝

The high and low prices of the Corporation's Common Stock for 1967 through May 19, 1967, as reported by The Wall Street Journal, were 56¾ and 38¼, respectively. The closing sale on the New York Stock Exchange on Friday, May 19, 1967, the last trading day prior to this offer, was 44¾.

A fee of 90¢ per share purchased in accordance with the terms of this offer will be paid to any member of a national securities exchange or of the National Association of Securities Dealers, Inc. (or any foreign dealer not eligible for membership in such Association who has agreed to conform to the Rules of Fair Practice of such Association) who solicits tenders and whose name appears in the appropriate space provided in the Letter of Transmittal accompanying a tender. No dealer is required to charge his principal an additional commission.

If prior to the purchase of any of the tendered shares by the Purchaser in accordance with this offer there is, in the opinion of the Purchaser, any significant increase in the aggregate number of outstanding shares of Common Stock of the Corporation or options or warrants relating thereto or securities convertible into such Common Stock, or any material change in the capitalization of the Corporation, or any material adverse change in the properties or condition (financial or otherwise) of the Corporation, or any other material adverse occurrence affecting the Corporation, the Purchaser or this offer, or the Corporation shall enter into any transaction, agreement or commitment not in the ordinary course of business or dispose of any substantial part of its assets, or any action or proceedings shall be brought or threatened against the Purchaser or any Co-Depositary arising out of this offer, the Purchaser may, at its election by notice in writing to the Co-Depositaries, withdraw this offer and terminate all obligations of the Purchaser to purchase shares hereunder.

G. H. Walker & Co., 45 Wall Street, New York, N. Y. 10005, and Scherck, Stein & Franc, Inc., 408 Olive Street, St. Louis, Mo. 63102, are acting as Dealer Managers in connection with this offer. Additional copies of this Offer Letter and the Letter of Transmittal can be obtained from the Dealer Managers or from the Co-Depositaries at the addresses given above.

Very truly yours,

Emerson Electric Co.

This offer expires at 5:00 P.M., Chicago time, on June 2, 1967 unless otherwise extended by the Purchaser as hereinabove provided.

For your shares to be eligible for purchase, your Letter of Transmittal must be received by a Co-Depositary before the expiration of this offer.

STIPULATION EXHIBIT 1.2.

STATEMENT OF VALUE

Emerson Electric Tender Offer for Dodge Manufacturing Corporation

Emerson Electric Co., St. Louis, has offered to purchase for $63.00 per share up to 550,000 shares of Dodge Manufacturing Corporation, Mishawaka, Indiana. The Emerson offer, which terminates unless extended, at the close of business on June 2, 1967 provides that all Dodge shares up to 550,000 will be purchased provided at least 460,000 shares are tendered. However, Emerson reserves the right to purchase all shares regardless of the number tendered.

Dodge is a producer of mechanical power transmission equipment, including such products as chain drives, couplings, V-Belt drives, friction clutches, pulleys and speed reducers. The sale of these products is closely tied to the level of plant equipment expenditures. Emerson Electric is a broadly diversified manufacturer of electrical and electronic products, systems and controls.

Dodge's earnings per share for the fiscal year ended June 30, 1966 were $3.52. Earnings for the last 12 months ended March 31, 1967 were $3.61 per share. For the quarter ended March 31, 1967 Dodge's earnings per share were $.84, down 17% from $1.01 for the comparable period a year ago.

The high-low market prices of Dodge Common Stock on the Midwest and New York Stock Exchanges for the

period 1964-1966, according to published information, were as follows:

	High	*Low*
1964	29⅞	24¾
1965	36⅞	26
1966	41	31⅝

The historical high for the common stock of Dodge up to this year was $41.00 per share. The market price during 1967 has ranged from a low of $38.25 on January 4, to $56.75 on March 23. On February 28, Emerson made a final proposal for a tax-free merger of the two companies. Following this proposal, the Dodge common stock price rose to a high of $56.75 on March 23 when the Dodge Board rejected this offer and Emerson formally withdrew it. The market price of Dodge common subsequently declined to the level of $44.75, the closing price on May 19.

We consider the offer of $63 per share to be favorable to the Dodge shareholders. The closing market price of Dodge on the New York Stock Exchange on Friday, May 19, 1967, the last trading day prior to the tender announcement, was $44.75. The offer of $63 per share represents a premium of $18.25 over this level and provides to Dodge shareholders a market appreciation of approximately 40%.

Based on fiscal 1966 earnings of $3.52 per share, the price/earnings ratio at the tender price of $63.00 is 17.9X. On the last 12 months earnings of $3.61, the price/earnings multiple is 17.5X. The common stocks of companies who manufacture products comparable to those of Dodge are currently trading at multiples of approximately 9-12X latest 12 months earnings. Dodge's book value at June 30, 1966 was $18.12. The company currently pays a dividend of $1.80 per share which represents a yield of 2.85% based on the tender price of $63.00.

By any standard, we believe the Emerson offer is generous to Dodge shareholders and will be favorably received by them. Dodge holders should tender their stock as expeditiously as possible so as to ensure having it purchased.

G. H. Walker & Co.
Dealer Manager

May 22, 1967

STIPULATION EXHIBIT 1.3.

Offer Terminates at 5:00 P. M., Chicago Time, on June 2, 1967 Unless Extended

LETTER OF TRANSMITTAL

Tender of Shares of Dodge Manufacturing Corporation in Acceptance of Offer

Important: This form should be completed and sent to a Co-Depositary named below, together with your certificates for the Common Stock of Dodge Manufacturing Corporation. Your Broker or Bank Will Assist You in Completing This Form.

To: First National Bank of Chicago, Co-Depositary
38 South Dearborn Street
Chicago, Illinois 60690

Marine Midland Grace Trust Co. of New York,
Co-depositary
140 Broadway
New York, New York 10015

St. Louis Union Trust Co., Co-Depositary
510 Locust Street
St. Louis, Missouri 63101

Dear Sirs:

The undersigned hereby acknowledges receipt of and irrevocably accepts (with respect to the shares deposited herewith or tendered hereby) the offer of Emerson Electric Co. (herein called the "Purchaser"), contained in the Offer Letter, dated May 22, 1967, of the Purchaser to purchase 550,000 shares of the Common Stock of Dodge Manufacturing Corporation (herein called the "Corporation") upon the terms and conditions set forth therein and upon the reverse side hereof, and in accordance therewith the undersigned hereby delivers or agrees to deliver to one of the above named Co-Depositaries (herein called "you") for such transfer and sale to the Purchaser the following certificates for shares of the Common Stock of the Corporation.

Certificate
Number(s) if available _____

Total Number of
Shares Represented
by Certificates _____

Number of*
Shares Tendered _____

* All shares represented by certificates listed are deemed to have been tendered unless otherwise indicated in this space.

Note: If additional space is required, attach a separate schedule.

The undersigned hereby warrants that the undersigned has full authority to sell and transfer the above mentioned shares, and that the Purchaser will acquire good title thereto, free and clear of all liens, charges and encumbrances and not subject to any adverse claim, when the same are purchased by it. The undersigned will, upon request, execute any additional documents necessary or desirable to complete the sale and transfer of the above-described shares.

Assignment

In consideration of the offer cited above and the payment of the purchase price specified therein, the undersigned hereby sells, assigns and transfers unto the Purchaser or its order so many of the shares of Common Stock of the Corporation represented by the above-described certificates as you may designate, and hereby irrevocably constitutes you as attorney to effectuate the transfer of said shares on the books of the Corporation with full power of substitution in the premises.

All authority herein conferred or agreed to be conferred shall survive the death or incapacity of the undersigned, and all obligations of the undersigned hereunder shall be binding upon the heirs, personal representatives, successors and assigns of the undersigned.

You are to deliver the stock certificates (or such portion thereof as represents shares being purchased), together with all accompanying evidences of authority, to or upon the order of the Purchaser against receipt by you as agent for the undersigned of the purchase price for such shares stated in the aforesaid offer. Delivery by you of such stock to the Purchaser shall be conclusive as to the performance of all conditions necessary to make this Letter of Transmittal effective.

If the certificates representing the shares tendered hereby are not delivered herewith, a member firm of the New York or the American Stock Exchange or a commercial bank or trust company having an office or correspondent in the cities of Chicago or New York must guarantee in the space provided below that such certificates will be deposited with you no later than 8 business days after dispatch of notice by you to such member, bank or trust company that this tender has been accepted by the Purchaser.

To Be Used Only If Certificates Are *Not* Delivered Herewith

The undersigned,

☐ a member of the New York or the American Stock Exchange,

☐ a commercial bank having an office or correspondent in the cities of Chicago or New York,

☐ a trust company having an office or correspondent in the cities of Chicago or New York,

guarantees to deliver to a Co-Depositary (in proper form for transfer) certificates for the shares tendered by this Letter of Transmittal not later than 8 business days after notice of acceptance thereof by the Purchaser is dispatched by such Co-Depositary.

Sign Here _____

Authorized Signature

Please issue the check for the purchase price to the order of the undersigned and mail it to the address shown below. If any of the shares mentioned above are not purchased by the Purchaser, please return the stock certificates representing such shares (and accompanying documents, as appropriate) to the undersigned at the address shown below.

The undersigned understands and agrees that you shall not be liable hereunder for any act or omission of the Purchaser.

Dated _____, 1967.

Very truly yours,

Please ☞ _____
Sign

_____

Signature(s) of registered holder. (Must be signed by registered holder(s) exactly as name appears in certificate(s) or by person(s) authorized to become registered holder(s) by certificates and documents transmitted or to be transmitted in the case of guaranteed certificates.)

Print Name _____
and Address _____
_____
Zip

The undersigned represents that the securities dealer who solicited and obtained this tender is:

Use the following space only if this tender was solicited by a qualified dealer.

Name _____
Address _____
_____

A member of a national securities exchange or of the National Association of Securities Dealers,

Inc. or a non-member foreign dealer who has agreed to conform to the Rules of Fair Practice of the NASD.

The instructions on Reverse Side must be followed.

Do Not Write in This Space

Shares Received:	Date Mailed:	Processed By:
Shares Accepted:	Check No.	Amount $
Shares Returned:	Certificate No.	Mail No.

Dealer Commission; Date and Amount:

STIPULATION EXHIBIT 1.4.

INSTRUCTIONS FOR
TENDER OF SHARES IN ACCEPTANCE OF OFFER

1. Each holder of the Corporation's Common Stock desiring to accept the offer should as soon as possible mail or deliver this Letter of Transmittal completely filled in and signed as specified herein together with the certificates representing his shares (unless delivery has been guaranteed as provided herein) and all documents required below, if any, to a Co-Depositary named on the reverse side.

2. Stock certificates must be either (a) duly endorsed in blank or (b) accompanied by duly executed stock powers with, in either case, signatures guaranteed by a commercial bank or trust company having an office or correspondent in Chicago or New York, or a broker who is a member of the New York or American Stock Exchange.

3. If this instrument is executed by an officer on behalf of a corporation, or by an executor, administrator, trustee, guardian, attorney, agent or other person acting in a fiduciary or representative capacity, proper documentary evidence must be furnished of the authority of the person executing the same. In cases where the person signing the Letter of Transmittal is not the registered holder of the stock certificates tendered thereby, such certificates must either be endorsed in blank or accompanied by duly executed stock powers, signature guaranteed, evidencing proper assignment of the tendered shares to the person signing such Letter of Transmittal. All questions as to the validity, form, eligibility (including time of receipt) and acceptability of any tender of shares will be determined by the recipient Co-Depositary in its sole discretion and such Co-Depositary may require whatever additional documentation it deems necessary to perfect any tender or transfer.

4. No stock transfer tax stamps, or funds to cover such stamps, need accompany this instrument. The Purchaser will pay any stock transfer taxes applicable to the transfer and sale to it. However, if payment of the purchase price is to be made to an assignee of the registered holder, or if deposited stock certificates are not registered in the name of the person signing the Letter of Transmittal, the amount of any stock transfer taxes on account of the transfer to such assignee or such person will be deducted from the purchase price, if evidence of the payment of such tax is not submitted.

5. The method of delivery of this instrument, the stock certificates, and documents (if any) is at the option and risk of the holder, but the delivery will be deemed effective for the purpose of having the tendered shares considered for purchase only when actually received by a Co-Depositary. If such delivery is by mail, it is suggested that insured registered mail be used.

6. No alternative, conditional or contingent tender will be accepted.

7. The Purchaser, entirely at its election, may waive any of the specified terms and conditions of its offer, in the case of any share or shares tendered or purported to be tendered.

STIPULATION EXHIBIT 1.5.

OFFER TO PURCHASE COMMON STOCK OF DODGE MANUFACTURING CORPORATION AT $63 PER SHARE

To Securities Dealers:

For your information as a possible soliciting dealer, we are enclosing herewith the following material relating to the offer of Emerson Electric Co. (the "Purchaser"), to purchase shares of Common Stock of Dodge Manufacturing Corporation ("Dodge"):

(1) Copy of the Offer Letter, dated May 22, 1967, to holders of Common Stock of Dodge.

(2) Form of Letter of Transmittal.

(3) A printed form of letter to be sent to your customers for whose account you hold Common Stock of Dodge registered in your name, with a perforated attachment for obtaining such customers' instructions with regard to the offer.

Please note that, unless extended, the offer terminates at 5:00 P. M., Chicago time, on June 2, 1967.

A fee of 90¢ per share purchased in accordance with the terms of the offer will be paid to any member of a national securities exchange or of the National Association of Securities Dealers, Inc. (or any foreign dealer not eligible for membership in such Association who has agreed to conform to the Rules of Fair Practice of such Association) who solicits tenders and whose name appears

in the appropriate space provided in the Letter of Transmittal accompanying a tender. No dealer is required to charge his principal an additional commission. Transfer taxes payable on the transfer of shares to the Purchaser will be paid by the Purchaser.

Additional copies of the enclosed material may be secured from First National Bank of Chicago, 38 South Dearborn Street, Chicago, Ill. 60690; Marine Midland Grace Trust Co. of New York, 140 Broadway, New York, N. Y. 10015; St. Louis Union Trust Co., 510 Locust Street, St. Louis, Mo. 63101; G. H. Walker & Co., Rm. No. 2057, 208 South La Salle Street, Chicago, Ill. 60604 or 45 Wall Street, New York, N. Y. 10005; or Scherck, Stein & Franc, Inc., 408 Olive Street, St. Louis, Mo. 63102.

Very truly yours,

G. H. Walker & Co.
Scherck, Stein & Franc, Inc.

Nothing contained herein or in the enclosed documents shall constitute you the agent of G. H. Walker & Co., Scherck, Stein & Franc, Inc. or Emerson Electric Co. or authorize you to make any statements on their behalf with respect to the offer described in the enclosed letter other than the statements specifically set forth in the letter.

STIPULATION EXHIBIT 2.1.

(Letterhead of Bryan, Cave, McPheeters & McRoberts
St. Louis, Missouri 63102)

June 26, 1967

Mr. W. R. Persons
Chairman of the Board of Directors
Emerson Electric Co.
8100 Florissant Avenue
St. Louis, Missouri 63136

Re: *Dodge*

Dear Buck:

Emerson, on or about June 16, 1967, purchased approximately 152,000 shares of the Common Stock of Dodge, at a net price to the selling stockholders of $63.00 per share. The actual cost to Emerson because of brokerage and other expenses was somewhat higher than this per share amount, but, for purposes of the following discussion, this $63.00 amount will be assumed and the following additional assumptions will be made:

Dodge outstanding Common Stock	1,150,000
Number of shares purchased by Emerson	152,000
Shares now owned by Emerson as per cent of total outstanding	13.3%.
Total cost of shares purchased by Emerson	$9,576,000
Shares required to be sold by Emerson to reduce holding to less than 10%	37,100

While these assumptions are substantially factual, since they are assumptions, any action taken in connection with the matters discussed below should be related to precise computation of any of these assumptions which may be relevant.

It is possible that, because of a better Reliance proposal or otherwise, Emerson may not want to pursue a proxy contest with Dodge and may want to consider alternatives, principally, how to dispose of, at a profit, the shares of Dodge stock which Emerson now owns. There

are tax considerations and Section 16(b) considerations to be taken into account on any such sale.

Tax Considerations

The primary tax objective will be the realization of long-term gain if the shares are sold at a profit. In order to have long-term gain, the holding period must be greater than six months. On the assumption that the Dodge shares were purchased on June 16, 1967, the sales date (for long-term gain purposes) can be no earlier than December 17, 1967. However, since as to some of the Dodge shares, Emerson's purchase thereof for tax purposes may actually have been made after June 16, 1967, the December 17, 1967 date should not be regarded as a completely safe date. The facts regarding the exact date of purchase for tax purposes of any shares sold should be carefully checked before any sale of such shares is made.

If, for the 16(b) reasons discussed below, a part of the Dodge shares are sold before the expiration of the six month holding period, any gain realized on such sale will be short-term.

If any contract is made to sell the Dodge shares, the critical date for tax purposes will not be the date the contract of sale is made, but will be the date on which the shares are actually sold under the contract. Also, for tax purposes, the receipt of Reliance preferred shares on the merger of Dodge into Reliance will not be a "sale" of the Dodge shares; and the Reliance shares received on the merger will have the same carry-over tax basis as the Dodge shares exchanged on the merger.

Thus, for tax purposes, it would be possible to obtain long-term gain by deferring the sale of the Dodge or Reliance shares until the expiration of the six month holding period. This same result could be achieved even though a firm contract for the sale of the shares, at a profit, was made prior to the expiration of the holding period, provided, however, that the actual consummation of the sale was deferred under the contract until after

the end of the six month period. The same is not true in respect of Section 16(b) considerations, discussed below.

Section 16(b)

On June 16, 1967, by its acquisition of more than 10% of the Common Stock of Dodge, Emerson came within the purview of Section 16 of the Securities Exchange Act of 1934.

Section 16(b) of the 1934 Act provides, in part:

> "* * * any profit realized by [the beneficial owner of more than 10% of any class of equity security of an issuer which is registered on a national securities exchange] from any purchase and sale or any sale and purchase of any equity security of such issuer . . . within any period of less than six months . . . shall inure to and be recoverable by the issuer * * *".

This sometimes is known as the "short swing profit" provision of the Act, and, briefly, means that the profit on a purchase and sale within the specified six month period will be required to be paid over to the security issuer if a proper suit for the recovery of such profit is initiated.

There is, first of all, some question as to whether the initial purchase by which Emerson for the first time became a greater than 10% stockholder of Dodge, should be taken into account for purposes of Section 16(b). Without discussing at length this technical question, we will simply point out that the Court of Appeals of the Second Circuit in *Stella v. Graham-Paige Motors Corp.*, 232 Fed. 2d 299, held that, for purposes of Section 16(b), the initial purchase of more than 10% of the equity securities of an issuer should be taken into account. There was a strong dissenting opinion in the *Graham-Paige* case and this dissent was followed by an Arkansas District Court in *Arkansas Louisiana Gas Co. v. W. R. Stephens Investment Co., Inc.*, 141 Fed. Supp. 841. There are also conflicting viewpoints expressed by writers of law texts and articles who have considered this matter.

Our view is that since this uncertainty exists, Emerson should proceed on the assumption that 16(b) does apply and should seek to avoid its consequences. On the other hand, Emerson should know that if it makes a short-term sale of all or part of its shares at a profit, it may be able to defend successfully against a claim of applicability of 16(b).

Assuming, then, that 16(b) does apply and that, under 16(b), Emerson "purchased" 13.3% of the Dodge shares on June 16, 1967, it will be considered to have "sold" these shares for 16(b) purposes as a result of the merger of Dodge and Reliance if the latter occurs. On this "sale" the Reliance preferred shares received will be deemed to be the sale consideration, and, if these shares have a value in excess of Emerson's cost basis of its Dodge shares (which is more than $63.00 per share), Emerson will have a profit for 16(b) purposes which, if 16(b) applies, Emerson could be required to pay over to Reliance.

The time of this "sale" on the Dodge-Reliance merger is difficult to state with certainty. Again, without going into the technical discussion, the time of such sale may be deemed to be as early as the time of the vote by the Dodge and Reliance stockholders on the merger proposal, although, more likely, we believe it would be held to be as of the time of the reapproval of the merger by the Dodge directors. As a precautionary measure, however, defensive action against 16(b) possibilities should be taken before the date of the Dodge stockholders' meeting.

The initial defensive step which should be taken by Emerson, if it comes to the conclusion that the Dodge-Reliance proposal will succeed, is for Emerson to reduce its holdings of Dodge stock to less than 10%. This means the gift or sale, prior to August 22, 1967, of 37,100 shares of the Dodge stock owned by Emerson. From this point on, Emerson, no longer being a 10% stock owner of Dodge, can sell the balance of its Dodge stock free of any 16(b) risk; provided, of course, the second sale is not legally tied in any way to the first sale. However, if the 37,100

shares are sold and such sale is at a profit, there is the risk of a suit being initiated seeking to compel Emerson to pay over this profit to Reliance on the basis that the sale is within the pay-over provisions of 16(b). It is in this suit, if it occurs, that Emerson would have to raise the defense of the non-applicability of 16(b). The success of this defense is, as noted, uncertain, but it should be remembered that it would involve only the profit realized on the sale of 37,100 shares; and any profit realized on a subsequent unrelated sale of the remaining 114,900 shares would not be in jeopardy under 16(b).

These distinctions between the tax and 16(b) considerations should be borne in mind: The merger of Reliance and Dodge would not effect a "sale" of Dodge shares for tax purposes; it would for 16(b) purposes. The making of a firm contract to sell the Dodge shares would not constitute a "sale" for tax purposes; it would for 16(b) purposes. For the latter reason, no contract of sale of the Dodge shares should be made within the six month period until Emerson has first reduced its Dodge holdings to less than 10%.

Bargain Sale to Charity

We have discussed with you briefly the possibility that Emerson, to avoid paying any profit on a sale of its Dodge shares to Reliance, might sell a part of the shares to a charity at Emerson's cost basis. This remains as a possibility, but it has some inherent problems. One, if Emerson required the charity to sell the shares or to vote against the merger, or attempted to obtain any tax benefit for the bargain sale, or attempted to use the bargain sale in satisfaction of any pledge liability to the charity, there is a risk that Emerson might be deemed to have sold, indirectly, the shares involved. If so, 16(b) and tax problems would remain. While some isolation from these problems might be established by a sale to a charity, we do not believe this can be regarded as a completely satisfactory solution to the problem. We will be happy to discuss this further with you.

Settlement with Dodge and Reliance

It may be possible at sometime before the Dodge-Reliance merger vote to agree upon a settlement with these companies under a negotiated agreement providing for the purchase of the Dodge shares owned by Emerson and/or the Reliance preferred shares to be received if the Dodge-Reliance merger is effected. It seems necessary, however, that any such settlement provide for a sale by Emerson of at least 37,100 of its Dodge shares before the August 22, meeting date. If this sale should involve a profit, the profit would be short-term and might be subject to recovery by Reliance under 16(b). If this sale did not involve profit and the profit was written into a contemporaneous option contract or other arrangement with Dodge and/or Reliance relating, to the sale of the balance of Emerson's Dodge shares, there would exist the risk that the two transactions might be tied together with adverse tax and/or 16(b) consequences. Any settlement arrangement of this nature should have prior detailed consideration and careful review, with the factors noted above in mind.

Summary

Because of the many considerations discussed above which are involved in any arrangement which may be made, relating to the disposition of the Dodge shares, no final summary for guidance is practical at this time. The immediate conclusion is that, because of the 16(b) risks noted, if it is determined that the Dodge-Reliance proposal has a reasonable likelihood of success, or Emerson determines to abandon its merger attempt, it is important for Emerson to reduce its holdings of Dodge stock to less than 10% prior to the Dodge stockholders' meeting.

Yours very truly,

Bryan, Cave, McPheeters & McRoberts

By /s/ Thomas V. Connelly

TVC/mcb

STIPULATION EXHIBIT 2.2.

(Letterhead of Bryan, Cave, McPheeters & McRoberts
St. Louis, Missouri 63102)

(Handwritten note: Photo of original as sent to Persons on July 8, after phone call discussion of its contents with him. T. V. C.)

July 7, 1967

Mr. W. R. Persons
Chairman of the Board of Directors
Emerson Electric Co.
8100 Florissant Avenue
St. Louis, Missouri 63136

Dear Buck:

Enclosed is a copy of an article in the Wall Street Journal of June 30, 1967 re: suit against Occidental Petroleum over settlement of its shareholdings in Kern County Land Co. by a side transaction with Tenneco, Inc. You may have noted this. It points out one of the problems involved in any possible "deal" with Dodge and/or Reliance for the Dodge shares owned by Emerson.

The apparent decisions made yesterday (i) to proceed with an immediate letter to Dodge stockholders asking them to withhold their proxies until the Emerson story is told, and (ii) to proceed with litigation to enjoin the holding of the Dodge meeting on August 22, 1967 will commit Emerson rather completely to proceed with a proxy fight against the Reliance-Dodge merger proposal. While withdrawal may be possible after either or both of these steps is taken, it will be more difficult. This, of course, will not necessarily be the case if a subsequent withdrawal is precipitated by an improvement in the Reliance offer or by any other event materially changing current circumstances. As Emerson proceeds further in this matter, however, the likelihood of litigation on a subsequent withdrawal from the proxy contest (particularly, if coupled

with any settlement of Emerson's Dodge share ownership) is increased.

At the present time, in view of the rejection of the Emerson proposal by the Dodge directors and in view of changed market conditions, Emerson could withdraw from the anticipated proxy fight with Dodge with reasonably minimal risk of litigation. There are some risks even in this, since Emerson agreed to keep its offer open until October 25, 1967 and since the rejection by Dodge directors of the Emerson proposal is not completely unequivocal. If any Emerson decision to withdraw at this time is made, we believe it should be announced and should not be coupled with any settlement agreement with Dodge or Reliance.

If Emerson because of 16(b) considerations should determine to sell its shares of Dodge Common Stock in the open market or privately, we believe it would be necessary first to announce both *the withdrawal of the Emerson merger offer to Dodge and Emerson's intention not to pursue a proxy fight on the Reliance-Dodge merger.

Also, if it is anticipated that somewhere down the road, Emerson might withdraw from any proxy fight with Dodge, this possibility should be mentioned in Emerson's proxy statement to its shareholders.

These somewhat random comments are made in connection with your indicated intent to make a final decision by Monday either to proceed or withdraw. The sum effect is that such a decision should be regarded as substantially final and that "half-way forward" is not really possible from this point.

In respect to litigation to enjoin the Dodge shareholders' meeting, the probabilities seem to us to be (if the Court finds Dodge guilty of 14A violations) that the meeting would be enjoined until the Dodge stockholders were re-circulated with full information concerning the Emerson proposal; but we would not expect the courts to usurp the directors' functions by compelling submission of the

Emerson merger proposal directly to the Dodge stockholders.

Yours very truly,

Bryan, Cave, McPheeters & McRoberts
By /s/ Thomas V. Connelly

TVC/mcb

Enclosure

(Handwritten footnote:

* More accurately—announce intention to sell Dodge shares to reduce holdings to less than 10%. Not necessary to withdraw Emerson merger proposal to Dodge.)

STIPULATION EXHIBIT 3.1.

Emerson Electric Co.
8100 Florissant Avenue
St. Louis, Mo. 63136

August 29, 1967

Mr. Arthur Shoults
Goldman, Sachs & Company
314 North Broadway
St. Louis, Missouri

Dear Mr. Shoults:

As you were advised, on August 28, 1967 we sold to Goldman, Sachs & Company 37,000 shares of Dodge Manufacturing Corporation Common Stock at a price of $68.00 per share. This sale was arranged by Mr. W. L. Davis, President of Emerson Electric Co., with Mr. L. Jay Tenanbaum of your New York office.

As arranged with you, we deliver herewith Dodge Manufacturing Corporation Common Stock Certificate No. NU32 for 46,302 shares. Attached to the certificate is a

power of attorney signed by Mr. J. C. Wilson, Vice President of the Company, and a Certified Copy of a Resolution of the Board of Directors of this Company adopted in an Adjourned Special Meeting of the directors held June 17, 1967.

The net payment of $2,497,153.68, after deductions for commissions of $16,946; New York State Stock Transfer Tax of $1,850 and New York Stock Exchange Fee of $50.32, is to be deposited to the credit of Emerson Electric Co. in our General Bank Account No. 1-70935-6 at Marine Midland Grace Trust Company of New York, 140 Broadway, New York, New York. We understand that payment will be made to us on Friday, September 1, 1967.

Would you please acknowledge receipt of the certificate for the 46,302 shares on the attached copy of this letter.

Very truly yours,
/s/ G. W. Mellicker
Treasurer

GWM/ds
Encls.
cc: Mr. L. Jay Tenanbaum

(Handwritten note: Received ctf for 46,302 shares August 29, 1967 Goldman, Sachs & Co. (Illegible) Cashier.)

STIPULATION EXHIBIT 4.1.

PURCHASE AGREEMENT

This purchase agreement entered into this 11th day of September, 1967, between Dodge Manufacturing Corporation, an Indiana corporation ("Dodge"), and Emerson Electric Co., a Missouri corporation ("Emerson"),

WITNESSETH:

WHEREAS, Emerson owns 115,282 shares of Common Stock, par value $2.50 per share, of Dodge ("the Shares"); and

WHEREAS, Dodge has 1,157,437 shares of Common Stock issued and outstanding on the date hereof, excluding 732 shares held in its Treasury; and

WHEREAS, Emerson desires to sell and Dodge desires to purchase the Shares on the terms and conditions herein set forth;

NOW, THEREFORE, the parties agree as follows:

1. Emerson agrees to sell the Shares, and Dodge agrees to purchase the Shares, at a purchase price of $69 per share or an aggregate price of $7,954,458.

2. The sale and purchase of the Shares shall be carried out at the office of Bryan, Cave, McPheeters & McRoberts in St. Louis, Missouri, at 11:00 A.M., St. Louis time, on September 13, 1967 or at such other time and place as shall be agreed by Emerson and Dodge. Such time is herein referred to as the "Closing Date." At the Closing Date Emerson shall deliver to Dodge stock certificates in the name of Emerson representing all of the Shares either duly endorsed in blank or with duly executed stock powers in blank (in either case with signatures guaranteed by a commercial bank or trust company or by a brokerage firm having membership on the New York Stock Exchange), accompanied by such supporting documents as may be necessary to pass to Dodge full title to the Shares, free and clear of any lien, encumbrance, restriction, charge or equity. Emerson shall pay, or cause to

be paid stamp taxes or other transfer taxes, if any, attributable to the sale. Such delivery shall be made against payment by Dodge of the aggregate purchase price for all of the shares through wire transfer of federal funds to the account of Emerson at a bank designated by Emerson.

3. Emerson agrees:

(a) That it will take no action to interfere with, prevent or otherwise obstruct the consummation of the proposed merger of Dodge into The Reliance Electric and Engineering Company;

(b) That it will forthwith dismiss with prejudice its complaint in Civil Action #4050, entitled "Emerson Electric Co., Plaintiff v. Dodge Manufacturing Corp., et al., Defendants" pending in the U. S. District Court for the northern district of Indiana and its appeal in case number 16398, entitled "Emerson Electric Co., Plaintiff-Appellant v. Dodge Manufacturing Corp., et al., Defendants-Appellees," now pending in the United States Court of Appeals for the Seventh Circuit, and that it will bring no other action against the defendants named in the aforementioned proceedings, or any of them, based on the alleged facts and claims forming the basis of the complaint and attempted amendment and supplement to the complaint in such proceedings; and

(c) That it hereby waives, releases and foregoes any rights it may have as a dissenting shareholder of Dodge under the laws of the state of Indiana.

4. Emerson shall not be obligated to sell any of the Shares, unless at the Closing Date it shall have received the written opinion of Messrs. Hopkins, Sutter, Owen, Mulroy, Wentz & Davis, counsel for Dodge, to the effect that (i) this Purchase Agreement has been duly authorized, executed and delivered on behalf of Dodge and constitutes its valid and binding obligation, and (ii) Dodge has the full right, power and authority to purchase the Shares pursuant to this Purchase Agreement.

5. Dodge shall not be obligated to purchase any of the Shares unless at the Closing Date it shall have received the written opinion of Messrs. Bryan, Cave, McPheeters & McRoberts, counsel for Emerson, to the effect that (i) this Purchase Agreement has been duly authorized, executed and delivered on behalf of Emerson and constitutes its valid and binding obligation, and (ii) Emerson has the full right, power and authority to sell the Shares pursuant to this Purchase Agreement and upon completion of the deliveries contemplated to be made at the Closing Date, Dodge will become the owner of the Shares free and clear of all liens, encumbrances, charges and equities.

6. Dodge and Emerson each represent to the other that it has not dealt with any broker or finder in connection with this Purchase Agreement or the sale and/or purchase of the Shares contemplated hereby and each will indemnify the other and hold the other harmless from any liability, loss, cost or expense resulting in the event that its representations should prove untrue.

7. This Purchase Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

8. This Purchase Agreement shall be construed in accordance with and governed by the laws of the state of Missouri.

IN WITNESS WHEREOF, this Purchase Agreement has been duly executed all as of the day and year first above set forth.

Dodge Manufacturing Corporation
By /s/ Carl W. Peterson
Executive Vice President

By /s/ Karl D. Jahnke
Secretary

Emerson Electric Co.
By /s/ W. L. Davis—Pres.
By /s/ R. H. McRoberts, Sec.

STIPULATION EXHIBIT 4.2.

(Letterhead of Emerson Electric Co.,
St. Louis, Mo. 63136)

September 11, 1967

Dodge Manufacturing Corporation
Mishawaka, Indiana

Gentlemen:

As further consideration for the execution of a certain Purchase Agreement between us, dated September 11, 1967, relating to the purchase and sale of 115,282 shares of Dodge stock owned by Emerson, Emerson agrees that any tax ruling received by Emerson from the I. R. S. relating to a proposed merger between Dodge and Emerson, shall not be used by Emerson, directly or indirectly, as the basis for any claims or court proceedings of any kind against Dodge or any of its employees, officers or directors.

Yours very truly,

/s/ W. L. Davis
W. L. Davis, President

WLD/ob

STIPULATION EXHIBIT 4.3.

(Letterhead of Bryan, Cave, McPheeters & McRoberts, St. Louis, Missouri 63102)

September 11, 1967

Dodge Manufacturing Corporation
Mishawaka
Indiana

Gentlemen:

We are counsel for Emerson Electric Co. We are familiar with the circumstances relating to the purchase by Emerson Electric Co. (Emerson) of 152,282 shares of the Common Stock of Dodge Manufacturing Corporation (Dodge), the subsequent sale of 37,000 of said shares by Emerson on or about August 28, 1967 and the proposed sale to Dodge by Emerson of the remaining 115,282 shares of said stock under the terms of a contract between Emerson and Dodge dated September 11, 1967, in which Dodge has represented that it has 1,157,437 shares of Common Stock issued and outstanding, excluding 732 shares held in its treasury.

Based on our familiarity with the facts and circumstances relating to such purchase and sales, it is our opinion that the proposed sale to Dodge of said 115,282 shares of the Common Stock of Dodge will not involve the realization of profit by Emerson subject to recovery by Dodge, its successors or assigns, under the provisions of Section 16(b) of the Securities Exchange Act of 1934.

Very truly yours,

Bryan, Cave, McPheeters & McRoberts
By /s/ R. H. McRoberts
R. H. McRoberts

RHMcR/em

STIPULATION EXHIBIT 4.4.

September 11, 1967

Emerson Electric Co.
8100 Florissant Avenue
St. Louis, Missouri 63136
Attention: Mr. W. R. Persons
Chairman

Gentlemen:

In connection with the proposed Purchase Agreement between Emerson Electric Co. ("Emerson") and Dodge Manufacturing Corporation ("Dodge") relating to the sale of 115,282 shares of Dodge stock by Emerson to Dodge, you have asked for the following representation from the undersigned as to the intentions of the management of Dodge.

Based upon the facts as stated in the letter opinion of even date herewith from Bryan, Cave, McPheeters & McRoberts, addressed to Dodge, and upon your representation that the sale of 37,000 shares of Dodge stock made by Emerson on or about August 28, 1967 was a sale to Goldman Sachs & Co. for its own account or for a customer or customers of that company, having no connection with Dodge or Reliance to the knowledge of Emerson or of the undersigned, and upon the opinions which their counsel have given to Dodge and Reliance, you are advised that neither the management of Dodge nor of Reliance has any intention of asserting any claim under Section 16(b) of the Securities and Exchange Act of 1934 for any so-called "short-swing" profits which Emerson may realize on the aforementioned sale of $115,282 shares of Dodge stock to Dodge; provided, however, that we do not hereby make any representation with respect to any action which may or may not be taken by any shareholder of Dodge or Reliance nor any action which the manage-

ment of either Dodge or Reliance may deem necessary to take because of any such shareholder action.

Very truly yours,

/s/ Harry D. Orr, Jr.
Harry D. Orr, Jr. of
Hopkins, Sutter, Owen, Mulroy, Wentz & Davis
Counsel for Dodge

/s/ Stephen J. Burns
Stephen J. Burns
Secretary and General Counsel of Reliance

/s/ Joseph E. Mullaney
Joseph E. Mullaney of
Jones, Day, Cockley & Reavis
Counsel for Reliance

STIPULATION EXHIBIT 4.5.

(Letterhead of Bryan, Cave, McPheeters & McRoberts
St. Louis, Missouri 63102)

September 13, 1967

Dodge Manufacturing Corporation
Mishawaka
Indiana

Gentlemen:

We refer to the Purchase Agreement dated September 11, 1967 (the Purchase Agreement) between Dodge Manufacturing Corporation (Dodge) and Emerson Electric Co. (Emerson) providing for the purchase, this date, by Dodge from Emerson and for the sale, this date, by

Emerson to Dodge of 115,282 shares of the Common Stock, $2.50 par value per share of Dodge (the shares).

We are counsel for Emerson and, as such, are familiar with its Articles of Incorporation and its Bylaws, each as amended to date, and all corporate proceedings of its stockholders and directors. We have made such other investigation as we deem necessary as the basis for the opinion hereinafter expressed.

Based on the foregoing, it is our opinion:

(i) the Purchase Agreement has been duly authorized, executed and delivered on behalf of Emerson and constitutes its valid and binding obligation, and

(ii) Emerson has the full right, power and authority to sell the shares pursuant to the Purchase Agreement and, upon completion of the delivery of the stock certificates for the shares on the date hereof in accordance with the terms of the Purchase Agreement, Dodge will become the owner of the shares, free and clear of all liens, encumbrances, charges and equities.

Yours very truly,

Bryan, Cave, McPheeters & McRoberts
By /s/ R. H. McRoberts

RHMcR/mcb

STIPULATION EXHIBIT 4.6.

(Letterhead of Hopkins, Sutter, Owen, Mulroy, Wentz & Davis, Chicago 60602)

September 13, 1967

Emerson Electric Co.
8100 Florissant Avenue
St. Louis, Missouri 63136

Gentlemen:

We are counsel for Dodge Manufacturing Corporation and as such are familiar with the terms and provisions of a certain Purchase Agreement dated September 11, 1967, between Dodge Manufacturing Corporation ("Dodge") and Emerson Electric Co. ("Emerson") relating to the purchase and sale of 152,282 shares of the Common Stock of Dodge. In this connection, and in accordance with Section 4 of said Purchase Agreement, we wish to advise that we are familiar with the corporate organization of Dodge, its Articles of Incorporation, By-Laws and the proceedings of the Board of Directors of Dodge relating to the authorization and execution of said Purchase Agreement.

Based on the foregoing, it is our opinion that said Purchase Agreement has been duly authorized, executed and delivered on behalf of Dodge and constitutes its valid and binding obligation in accordance with its terms and that Dodge has the full right, power and authority to purchase said 152,282 shares of its Common Stock from Emerson pursuant to said Purchase Agreement.

Very truly yours,

Hopkins, Sutter, Owen, Mulroy,
Wentz & Davis
By /s/ Harry D. Orr, Jr.

A Partner

HDO:phg

IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF MISSOURI, EASTERN DIVISION.

(Title omitted in printing.)

(1*) TRANSCRIPT OF PROCEEDINGS.

Be It Remembered, that this cause came on for hearing on the 3rd day of February, 1969, before

Honorable John K. Regan, Judge,

presiding in Court 3 of the United States District Court of the Eastern Division of the Eastern District of Missouri, with the following appearances:

For the Plaintiff:

Mr. R. H. McRoberts, Mr. Thomas C. Walsh.

For the Defendants:

Mr. Thomas P. Mulligan, Mr. Patrick J. Amer, Mr. Kenneth Teasdale.

(Before court convened, Plaintiff's Exhibits Nos. 1 through 33 were marked by the reporter for the purpose of identification.)

(2) (Index to Transcript of Proceedings omitted in printing.)

(3) The Court: I take it that the defendant's motion for production of, inspection and copying has never been called up, is moot?

Mr. Teasdale: That's correct, Your Honor.

The Court: All right. Let the record show that the defendant's motion for production, inspection and copying was never called up or presented, and apparently the plaintiff has produced, so it will be overruled as moot.

All right.

Mr. McRoberts: Your Honor please, with the permission of the Court, we propose to try only the issue of liability at this time, deferring to a later date the question of the amount of damages, if any.

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* Boldface numerals in parentheses denote pagination of original typewritten transcript.

Of course, if there is no liability, that will become moot too.

The parties have stipulated certain of the facts in this case, and I would like to file this stipulation at this time.

(Document was handed to the clerk.)

I think it might be helpful if I would make a very brief—

The Court: Let me finish reading this Complaint, Mr. McRoberts.

Mr. McRoberts: Surely.

The Court: Okay.

(4) OPENING STATEMENT IN BEHALF OF PLAINTIFF:

Mr. McRoberts: As Your Honor will notice from the Complaint, this is a suit for declaratory judgment to determine whether or not Emerson Electric Company is liable to Reliance Electric for profits realized by it in the purchase and sale of stock of Dodge Manufacturing Company. Dodge was subsequently merged into Reliance, and that is why Reliance is a defendant here, although the dealings were with stock of Dodge.

There is, will be, I believe, no dispute about the basic facts in this case, or perhaps about any of the facts. Certain of them have been stipulated. Additional evidence we want to put in we think will help to determine whether or not this case does come within Section 16(b).

As Your Honor knows, the purpose of 16(b)—

The Court: Just a minute.

(There was a short interruption.)

The Court: All right. You may proceed.

Mr. McRoberts: Your Honor knows that 16(b) by its very terms was enacted for the purpose of preventing the unfair use of information which may have been obtained by any such beneficial owner, and such beneficial owner refers to one who owns more than ten per cent of the stock of the issuing corporation.

There is no doubt that Emerson purchased on June 16, 1967, 152,282 shares of Dodge Manufacturing Corporation. The (5) purchase was made pursuant to a request for tenders and Dodge stock was listed on the New York Stock Exchange. There is no dispute about the fact that on August 28th Emerson and Goldman, Sachs agreed to sell 37,000 of those shares to Goldman, Sachs, and on the 29th of August those shares were delivered to Goldman, Sachs pursuant to that agreement.

There is also no dispute about the fact that Reliance initiated about that same day, the 29th, conversations looking toward the purchase by Reliance of the remaining 115,282 shares, and that that sale to Reliance was consummated on the 13th of September, pursuant to a purchase agreement which was executed on the 11th of September. 37,000 shares brought Emerson's position in this stock to less than ten per cent of the issued and outstanding stock.

So we have two sales, and the question is, is Emerson liable to account under either one of those sales?

The evidence which we will propose to offer is primarily documentary. It will be supported with a brief narrative statement brought out by Mr. Persons to tell the circumstances under which the stock was purchased, the stock was dealt with by Emerson, the dealings between Emerson and Dodge, and the circumstances of the sale, and we believe that those facts will be of significance in three respects:

First, showing that the transaction was not one which (6) could possibly have led to the abuses to which this act is directed;

Second, that the first purchase, single purchase on June 16th, which brought Emerson, in one fell swoop, to the thirteen plus per cent of stockholdings in Dodge, does not come within the coverage of the act, and should be disregarded; and,

Finally, that the sale that was eventually made, sales that were eventually made, were made involuntarily in

the sense that they were under the pressure of the impending merger between Dodge and Reliance, which would have constituted a sale against our wishes, and would have imposed, might have imposed liability for profits on the entire transaction.

We think this comes squarely within the sentence from the Eighth Circuit Court of Appeals decision a couple of years ago in the case of Petteys v. Butler, where the Court said, "We believe that each case must be examined on its own facts," and the act only applied when these facts disclose the possibility of abuses that the acts were designed to prevent, and on the record we believe that this could not have been subject to the abuses which the act was designed to prevent.

Do you have any statement?

OPENING STATEMENT IN BEHALF OF DEFENDANT

Mr. Mulligan: May I, Your Honor?

The Court: Yes.

(7) Mr. Mulligan: I don't think, Your Honor, that—first of all, I appreciate the opportunity to address the Court, being a lawyer from another jurisdiction, both Mr. Amer and I wish to thank the Court for permission to appear before you.

I do not think I have anything to add to the basic facts which Mr. McRoberts stated. Those are truly the facts which give rise to the legal questions which are before Your Honor.

I think that basically we do have arising out of those facts which he stated a question which Your Honor will ultimately have to decide.

I might say at this point that it will be, generally speaking, our view that the legal questions are framed, and totally framed, by the stipulation which has been submitted to the Court, and that, in general, it is our view that the additional facts, the additional information which Mr. McRoberts indicated they would be prepared, on be-

half of the plaintiff, to offer testimony with respect to, is generally irrelevant to the basic legal issues which Your Honor has to decide, and which really get down to a question of determining what Congress intended when it passed Section 16(b).

Briefly, it is our position that that section was intended to squeeze all of the profit out of any transaction in which a person acquired more than ten per cent of the outstanding (8) shares of the issuer; that that situation does exist here, and that although there were two sales of the total stock acquired by Emerson, one sale of 37,000 shares, and another sale of 115,282, that those sales were so close in time that they can be said as a matter of law, on the basis of all the facts included in the stipulation, to be related; and, therefore, to constitute one transaction within the meaning of the act.

The Court: Was there something similar to this in that Georgia Pacific Frisco case?

Mr. Mulligan: I must confess, Your Honor, I am not familiar with that case.

The Court: I have forgotten. Bob, this had to do with that merger and they offered ten per cent.

Mr. McRoberts: I don't recall a Georgia Pacific case which had any bearing on this one.

The Court: Well, you ought to know.

Mr. Mulligan: Thank you, Your Honor.

(There was a short interruption.)

W. R. Persons, being first duly sworn, testified in behalf of the plaintiff as follows:

Direct Examination by Mr. McRoberts.

Q. Will you state your name, please, sir? (9) A. W. R. Persons.

Q. Where do you live, Mr. Persons? A. I live in St. Louis County.

Q. And what is your employment? A. I'm Chairman of Emerson Electric.

Q. Chief Executive Officer? A. Yes.

Q. And have been for some years? A. Yes.

Q. Were you such in 1966 and 67, Mr. Persons? A. I was.

Q. Did Emerson become interested in Dodge Manufacturing Company at or about the end of 1966, or early 1967? A. Yes.

Q. And how did you happen to become interested in Dodge? A. Well, we were interested in the developments that were taking place in this field. Dodge were manufacturers of transmission devices which would go in connection, in installation and connection with electric motors. There are several companies in that field, and some of these companies were joining in partnership with builders of electric motors and with speed reducer devices, conveyor companies, and we felt this represented a trend in that industry which could affect us as manufacturers of motors.

(10) Q. Was Dodge brought to your attention by any broker or intermediary? A. No, it was not. One of our divisions made a survey of such companies and presented a report to us.

Q. What information did you have about Dodge through this survey, or any other way?

Mr. Mulligan: Your Honor, in the interest of expediting things, and saving time, it is generally the position of Reliance in this litigation that testimony of the kind which is now being developed, and which I know from previous conversations with Mr. McRoberts he plans to develop, is irrelevant to the basic issues. I would like, if I may, sir, to enter an objection, and if it is agreeable to the Court, would it be possible to have a blanket objection to this line of testimony so that I need not interrupt Mr. McRoberts?

The Court: Let the record show that the defense has objected to—objects to this present testimony of this witness concerning the reasons they became interested in the purchase of Dodge stock, and any and all testimony relative to the manner in which they became interested, and

the manner in which they became aware of Dodge's business and operations as being immaterial and irrelevant to the issues of whether or not in this declaratory judgment action it is purely a matter of law as to whether or not the plaintiff, having been a ten per cent (11) owner of stock, enjoys any gain from the sale of that stock; isn't that your position?

Mr. Mulligan: Yes, it is. That is precisely it.

The Court: All right. I will take the objection, and it will be noted, and we will receive any and all evidence subject to that objection.

Mr. Teasdale: Excuse me, Mr. McRoberts. May I say I believe also that the defendant intends further to object, and would like to object at this time to any evidence offered by the plaintiff concerning the circumstances surrounding the acquisition of the stock and the sale of the stock, the attitudes concerning the minds of both parties involved in the lawsuit as to whether there was the ability to acquire inside information or not, and I think actually that our objection is somewhat broader than just how Emerson became interested in the stock, but covers the entire panorama of facts surrounding this transaction that are not contained in the stipulation, and I believe that that is somewhat broader than we have stated previously, so may we for the record, say that we object to all of this testimony, and with the understanding that Your Honor will overrule it, and we hope that this will perfect this objection for the record.

The Court: Well, if you understand I am going to overrule it, I think you are going beyond what I said. I said (12) I would hold in abeyance the ruling until after all the evidence is in, and then I'll make a determination at that time when I am required to write on this whether I sustain it or overrule it.

All right. Proceed.

Q. (By Mr. McRoberts) Mr. Persons, what kind of information did you have when you started your negotiations with Dodge? I am talking about the source of it, primarily? A. Well, Dodge is a public corporation. They

have printed annual reports for many years. They have submitted 10(k) and 8(k) reports to the SEC, which were available to us, and so we were able to gather a substantial record on this company from public information.

Q. Did you, at that time, have any information obtained from any inside source of Dodge, from any officer, director or employee of Dodge? A. None.

Q. And you carried on these negotiations over a period of several months, did you not, Mr. Persons? A. Almost a year.

Q. And your negotiations were primarily with the president of Dodge, Mr. J. Allan MacLean? A. They were.

Q. And did you finally appear before the Board of (13) Directors of Dodge? A. I did.

Q. And made a presentation to the Board? A. Made a presentation to the Board of a merger proposal.

Q. And that was, I believe, about February 28th, 1967, was it not? A. Yes. My original visit with Mr. MacLean was in April of 1966, and our presentation to their Board was in February.

Q. February 28th? A. Of 1967.

Q. And in due course were you advised by Mr. MacLean that the Dodge Board rejected Emerson's offer? A. I was.

Q. And what did Emerson do then following that rejection? Did you formally terminate negotiations? A. We did. We sent a telegram to the financial press and to Dodge announcing that we were terminating discussions.

Q. Is that document which has been identified as Plaintiff's Exhibit 1 a copy of that telegram? A. It is. It's a telegram signed by me to the Stock Exchange and the Financial Wire Services.

Q. Then for two months did Emerson have any further (14) contact with Dodge of any kind? A. None.

Q. And what happened on May 22, 1967, Mr. Persons? A. On May 22nd, which I believe was a Saturday, our directors met and considered the discussions which we had had with this company for many months past, and decided that we had made a very favorable offer to their

stockholders, which had been rejected for no clear reason by Dodge's board, and we therefore voted to extend a tender offer to the stockholders for 550,000 shares of their stock.

Q. And is Plaintiff's Exhibit 2 a copy of the offer for tender that you made? A. It is.

Q. And was that published in various financial papers and the public press generally? A. Yes, it was published in the Wall Street Journal, and it was published in various community papers where they thought that Dodge stockholders might be located.

Q. And is Plaintiff's Exhibit 3 a copy of one of those published offers for tender? A. It is.

Q. And was that thereafter extended, the original offer, extended by further publications, of which Plaintiff's Exhibit 4 is a copy? (15) A. It was extended, yes, and this exhibit is a notice in the financial press of extension until June 16th of that offer.

Q. And as soon as this offer was made on May 23rd, did you get any reaction from Dodge? A. Yes. Dodge, on May 23rd, announced to the financial community, through a release from Mishawaka that they urged their stockholders to reject that tender offer.

Q. Mishawaka is a suburb of South Bend? A. Yes.

Q. And that is where Dodge's plant and office is located? A. That is right.

Q. And subsequently did Mr. MacLean, on behalf of Dodge, write also to the stockholders of Dodge opposing the Emerson— A. Tender? Yes. These Exhibits 7 and 8 here are typical of letters which Mr. MacLean sent to the Dodge stockholders following that news release.

Q. And then what was the first time, approximately the first time that there was any public announcement of a proposal to merge Dodge and Reliance Electric? A. My record shows that that announcement took place on May 25th.

Q. And that was reported in the public press? A. It was reported in the public press, both the financial press in New York and in local papers.

(16) Q. And Exhibit 9 is a copy of one of such reports, is it not? A. Yes.

Q. And then did you next have a telephone communication from Mr. MacLean about some sort of litigation? A. Yes. I was advised on a Friday evening that—

The Court: What is the date?

The Witness: I beg your pardon. I'll consult my records, Your Honor, if I may. On Friday, May 26, I was advised by phone by Mr. MacLean that Dodge were filing suit the next day to enjoin us from accepting any tenders for Dodge stock; that his suit was to be filed in Judge Grant's office, the Northern District of Indiana, South Bend.

Q. And was such a suit filed, Mr. Persons? A. It was.

Q. And a copy of the restraining order served upon Emerson on Saturday night, late? A. Yes. Judge Grant issued a restraining order on May 27th, and it was served to one of Emerson's people on Saturday evening, May 27th.

Q. And following the filing of that suit, was there a hearing in South Bend, Indiana? A. There was. On June 2nd and 3rd.

Mr. McRoberts: Your Honor please, I have marked as (17) Exhibit 10 our file of that suit, and much of it may be irrelevant, but rather than pulling it apart—

The Court: Okay.

Mr. McRoberts: This contains a copy of the Complaint and certain of the proceedings in the case, and the final order and decision of the Court.

Q. (By Mr. McRoberts) In the course of that hearing, Mr. Persons, was a motion to cite Emerson for contempt filed? Do you recall that? A. There was, on the basis advertisements of the tender did appear in some cities on Monday.

Q. Who was handling the making and placing of these ads in the various newspapers? A. Those ads were being managed by the financial manager in New York, the G. H. Walker Company.

Q. I see. And you got the restraining order served

upon you sometime Saturday night, the 27th? A. Saturday evening, the 27th. I did not receive this personally, Mr. McRoberts. One of our people did at the plant.

Q. As a matter of fact, you arranged to have somebody stay out there at the gate at Emerson to accept that? A. I believe you did that.

Q. But all of the ads were not cancelled by Monday morning; is that correct? **(18)** A. Well, that was impossible. We got in touch with—attempted to get in touch with G. H. Walker, and I believe someone finally did late that evening, and they attempted to get in touch with the publications, and were unable to reach them. This was explained to the court.

Q. And then on June 8th the Court rendered its decision on the prayer for a temporary injunction, did it not? A. Yes.

Q. Mr. McRoberts: Without attempting, Your Honor, to state specifically what Emerson was charged with, that will appear from the Complaint in this case, among other things was Emerson charged by Dodge with using, taking advantage of confidential information that had been obtained in the course of your negotiations? A. It was.

Q. And was testimony offered on that subject before Judge Grant? A. It was.

Q. And, again, without attempting to quote the specific language of Judge Grant's finding, Your Honor, you will see that he found that Emerson had not obtained or made use of any confidential information.

Q. Now, Mr. Persons, upon the filing of this suit, on May 27th, Dodge advised its stockholders of the filing of that suit and sent letters to them, which Exhibits 11 and 12 **(19)** are copies, did they not? A. Yes.

Q. In the course of the trial of the suit, were you given permission to extend the tender offer, and did you so extend the tender offer? A. Following Judge Grant's decision lifting the—

Q. It was in the middle of the hearing Judge Grant said you could extend it because it was about to expire? A. My memory was not steady at that point. The tender

offer would have expired during the course of the suit, and Judge Grant did extend, because of that did extend it.

Q. And Exhibit No. 13 is a copy of the published notice of that extension, is it not? A. It was extended to June 16th, with Judge Grant's permission.

Q. Now, at about this time, the notices about Dodge's proposed merger with Reliance were being distributed to Dodge stockholders and in the public press, were they not? A. That is right. Their original announcement of the agreement in principle was dated May 25th, and then they circulated, following that, further advice about the proposed merger with Reliance.

Q. And the terms of the proposed merger were finally announced? A. Yes.

(20) Q. Then I am going to give you this copy just to refresh your recollection as to the date, Mr. Persons, and ask you whether or not on June 15th, 1967, at a special meeting of the Board of Directors of Emerson, the Board authorized the management to accept the shares of stock which had been tendered up to the close of business on June 16, 1967, and to its making an offer to merge with Dodge? A. Yes. I have in my hands the minutes of such a special directors' meeting held on June 15th, 1967.

Q. And then, without attempting to come in on each specific exhibit, between June 15th and June 22nd, were there further communications by Dodge to its stockholders, and by Emerson to Dodge, relating to the proposed Emerson merger and the proposed Dodge-Reliance merger, and are Exhibits 14 through 19 copies of such communications? A. Yes. I have here letters which Mr. MacLean sent to Dodge stockholders urging them to seriously consider and accept the Reliance Electric offer, and comparing it with the proposals which Emerson had made.

Q. There are also copies of Emerson's communications on the same subject? A. Yes. Emerson wrote to the Dodge Board, wrote to Mr. MacLean and proposed a merger arrangement, and that was acknowledged by Mr. MacLean.

Q. Mr. Persons, did Emerson have a copy of the (21) Dodge stockholders' list at that time? A. We did not.

Q. Was Dodge requested to furnish you with a copy of the list, or permit you to make a copy? A. Yes. On June 17th we requested a stockholders' list from them.

Q. Was that request denied or granted? A. It was acknowledged and denied.

Q. And did Emerson thereafter file a suit against Dodge in the state court of Indiana? A. On June 27th we filed suit.

Q. Seek— A. To secure such stockholders' lists.

Q. And is Plaintiff's Exhibit 20 a copy of your petition in that case, and the order which the court made directing the purchasing of such a list? A. It is.

Q. Then, Mr. Persons, your proposed merger with Dodge was finally put into formal shape, was it not? A. Yes.

Q. And transmitted to Mr. MacLean and the members of the Dodge Board by letter dated June 29th, of which Exhibit 21 is a copy? A. That is a copy of the proposal which we sent to all members of the Board of Directors.

(22) Q. And Exhibit 22 is the formal plan and agreement of merger itself that you sent to them, is it not? A. That is.

Q. And Exhibit 23 is Mr. MacLean's acknowledgment of that? A. Yes. This, in effect, is a letter from Mr. MacLean rejecting our proposal.

Q. Acknowledges receipt of it? A. Receipt of it.

Q. Following that, Mr. Persons, did Dodge and did Emerson and Reliance engage in a proxy contest, seeking to get the Dodge stockholders to vote for their respective plans of merger? A. We did.

Q. And in the course of that contest, did Emerson file another suit in the Federal Court at South Bend, Indiana, against Dodge Manufacturing Company and its directors? A. We did on July 17th.

Q. And Exhibit 25 is a copy of the original Complaint in that case, and certain of the pleadings, and the final order that was entered in this case, is it not? A. Requesting correction of false statements in connection with the Emerson merger.

Q. And without trying to quote precisely what the Complaint says, you were charging Dodge and the officers with (23) making false and misleading statements about the Emerson proposal, and about the Reliance proposal? A. Right.

Q. And in the course of that proxy, the Court denied you the relief that you prayed for in that case, did they not? A. Yes.

Q. And an appeal was taken to the Seventh Circuit Court of Appeals? A. Yes.

Q. And in the course of that proxy contest, during that pendency of that litigation and thereafter, were various communications sent by Emerson and by Dodge to the Dodge stockholders, of which Exhibits 24 through 30 are copies? A. Yes. Both sides sent communications in support of its particular views.

Q. And the Dodge stockholders' meeting was held, I believe, on August 22nd, 1967? A. Yes.

Q. At which time the Dodge stockholders voted substantially in favor of the Reliance merger, did they not? A. That is true.

Mr. McRoberts: It is stipulated, if Your Honor please, in the stipulation that Emerson's counsel, our firm, sent certain communications to Emerson commenting upon (24) Section 16(b) and the threat of it, and various steps which might be taken to avoid it, and it is also stipulated that on August 28th, 1967, following discussions which had been carried on for several days before that over the telephone, Mr. Davis the president of Emerson—Mr. Persons was out of the country at the time—Mr. Davis, the president of Emerson, and Mr. Tenanbaum of Goldman, Sachs, agreed that Emerson would sell and Goldman, Sachs would purchase 37,000 shares of Dodge stock; that on August 29th those shares were delivered by Emerson to the local office of Goldman, Sachs, and were paid for a few days thereafter by Goldman, Sachs. It is also stipulated that on August 29th Mr. Rose, counsel for Reliance, of the Jones, Day, Cockley & Reavis firm, telephoned me, and following that telephone call on September 15th, 1968,

Mr. Rose and I agreed that Emerson would sell and Dodge would agree to purchase the remaining 115,282 shares of Dodge stock held by Emerson, subject to the negotiations of a definitive agreement of sale; that thereafter negotiations toward such an agreement were carried on, and on the 11th of September, such a purchase agreement was entered into, a copy of which is attached to the stipulation, and that at the time certain letters were exchanged by counsel expressing certain opinions and giving certain advice with respect to the effect of the transaction, which are attached to the stipulation.

(25) I am withdrawing Exhibit 32, Miss Rahn, because that is already a part of the stipulation.

Thereafter, if Your Honor please, Reliance proposed to acquire the Toledo Scale Corporation, and in that connection put out a proxy statement, a copy of which has been identified as Plaintiff's Exhibit 33. And I offer that in evidence in directing the Court's attention solely to the statement under the caption "General Information" appearing on page 37 and 38, which refers to the transactions whereby Emerson acquired and disposed of these shares of stock of Dodge.

Mr. Persons, prior to the acquisition by Emerson of the 152,252 shares of stock on June 16, 1967, did Emerson own any stock, common stock, or any other securities of Dodge Manufacturing Company? A. None.

Q. Or at any time thereafter, except that same 152,282 shares? A. No, we did not.

Q. Now, except for the dealings with Dodge, as shown in the documents offered in evidence here, and the one telephone call which Mr. MacLean made to you on Friday, May 26th, did you, or to the best of your knowledge, information and belief, did anyone on behalf of Emerson have any personal dealings or communications with Dodge, or any of the officers of Dodge? **(26)** A. No. Mr. MacLean and I agreed at the beginning of our conversations in 1966 that we would—

Q. I am talking about— A. Excuse me.

Q. I am talking about the time after you purchased the shares? A. No.

Q. And during all of this proxy contest, and this litigation, and so forth? A. No, Mr. McRoberts, we had no communication.

Q. And did you, at any time after the trial, before Judge Grant and after he rendered his decision on June 8th, 1967, obtain any information with respect to the affairs of Dodge, the business, the property of Dodge, the activities of Dodge, other than public information which was available to all stockholders? A. None.

Mr. McRoberts: That is all.

Mr. Teasdale: Your Honor, could we have a short recess?

The Court: All right.

Mr. McRoberts: To complete the record, I might offer in evidence, if Your Honor please, the various exhibits which have been identified and been offered, excepting 32, which (27) was marked but is a duplication, and that is the only exception.

The Court: All right. All exhibits that have been offered, save Exhibit No. 32, will be received.

Court will have a temporary recess.

(Following a brief recess, the further following proceedings were had:)

Mr. Teasdale: Your Honor, at this time—shortly before the recess Mr. McRoberts offered certain documentary evidence into the record. Though we are late, we would request the Court's permission to renew our objection that these documents are immaterial.

The Court: You mean all, with the exception of 32?

Mr. Teasdale: Yes, Your Honor. All, with the exception of 32, on the grounds that intent and the ability to actually get inside information is irrelevant in 16(b) questions.

The Court: Well, I will take it subject to that.

Mr. Teasdale: Thank you, Your Honor. And we have no cross-examination.

(Witness excused.)

Mr. McRoberts: Your Honor please, we would like a short time to file a memorandum, and perhaps two weeks—

The Court: Thirty days.

Mr. McRoberts: Two weeks will be plenty.

(28) Mr. Teasdale: Your Honor—

The Court: I am sure you want at least two weeks to reply, and they will want five days, so plaintiffs given fourteen days to file their briefs and suggested Findings of Facts and Conclusions of Law. Defendants given, and counterclaimants are given— you have a counterclaim in here, don't you?

Mr. Teasdale: Yes, we do, Your Honor.

The Court: What about that?

Mr. Teasdale: The counterclaim is essentially the reverse of the request for declaratory judgment.

The Court: All right. They have fourteen days in which to reply, and then the plaintiffs will have five days thereafter. On the filing of the last brief, the matter will be taken as submitted.

Mr. Walsh: Your Honor, may we have leave to withdraw the original exhibits for the purposes of copying?

The Court: You may.

Mr. Teasdale: Your Honor, has the stipulation been officially filed and received by the Court?

The Court: I took it—it was not marked as an exhibit, but it was filed. I thought it was by consent that it was being submitted.

Mr. Teasdale: It is by consent, Your Honor.

The Court: It will be received.

Mr. Teasdale: We have nothing else. Thank you **(29)** Your Honor.

(Certificate of reporter omitted in printing.)

PLAINTIFF'S EXHIBIT 1.

(Western Union Telegram)

March 22, 1967

New York Stock Exchange
11 Wall Street
New York, N. Y.

Midwest Stock Exchange
120 S. La Salle Street
Chicago, Illinois

Dow Jones Ticker Service
44 Broad Street
New York, N. Y.

Following a meeting of the Board of Directors of Emerson Electric Co. today, the following statement was issued with respect to the company's merger negotiations with the Dodge Manufacturing Corporation, Mishawaka, Indiana:

After many months of friendly negotiations, Emerson Electric Co. on February 28, 1967 made to the Dodge Board of Directors its final proposal to acquire, on a tax-free basis to Dodge stockholders, the business and assets of Dodge in exchange for shares of Emerson stock. Emerson's offer has been rejected by the Dodge Directors and Emerson's Board of Directors today voted to formally withdraw such offer and to formally terminate all negotiations with Dodge Manufacturing Corporation.

W. R. Persons, Chairman
Emerson Electric Co.

PLAINTIFF'S EXHIBIT 3.

The Wall Street Journal
Wednesday, May 24, 1967

Offer to Purchase
550,000 Shares of Common Stock of
Dodge Manufacturing Corporation
at $63 per Share

Emerson Electric Co. hereby invites tenders of 550,000 shares of Common Stock of Dodge Manufacturing Corporation for purchase at $63 per share, net to the selling stockholder pursuant to the terms and conditions set forth in the Offer Letter dated May 22, 1967, and the letter of Transmittal. The closing price of Dodge Manufacturing Corporation Common Stock on the New York Stock Exchange on Friday, May 19, 1967, the last trading date prior to the announcement of the offer was $44.75.

The offer will terminate at 5:00 P. M., Chicago time, on June 2, 1967, unless extended.

All shares up to 550,000 shares tendered before the offer expires will be purchased provided at least 460,000 shares are tendered. If less than 460,000 shares are tendered, none or all or a portion of the shares tendered may be purchased. If more than 550,000 shares are tendered, none or all or a portion of the excess shares may be purchased. If less than all shares tendered up to June 2, 1967 are purchased, they will be purchased on a pro rata basis. If the offer is extended and less than all shares tendered during the extended period are purchased, they will be purchased in the order received by the Co-Depositaries.

Copies of the Offer Letter and Letter of Transmittal may be obtained through any broker or bank or from

First National Bank of Chicago
38 South Dearborn Street
Chicago, Illinois 60690
(312) SH 3-1353

Marine Midland Grace Trust
Company of New York
140 Broadway
New York, N. Y. 10015
(212) 797-8200

G. H. Walker & Co.
Room #2057
208 South La Salle Street
Chicago, Ill. 60604
(312) 782-0551

St. Louis Union Trust Co.
510 Locust Street
St. Louis, Mo. 63101
(314) CE 1-9300

G. H. Walker & Co.
Broadway and Locust
St. Louis, Mo. 63101
(314) CE 1-3000

Scherck, Stein & Franc, Inc.
408 Olive Street
St. Louis, Missouri 63102
(314) GA 1-0225

Emerson Electric has retained G. H. Walker & Co. and Scherck, Stein & Franc, Inc. to act as Dealer-Managers to solicit tenders through securities dealers. Any member of a national securities exchange or of the National Association of Securities Dealers, Inc. (or any foreign dealer not eligible for membership in such Association who has agreed to conform to the Rules of Fair Practice of such Association) which has solicited and obtained the tender of shares and whose name appears on the Letter of Transmittal accompanying said shares will receive a fee of 90¢ for each share purchased under this offer.

G. H. Walker & Co. Scherck, Stein & Franc, Inc.
May 22, 1967

— Use coupon below to obtain Letter of Transmittal —

(Send to G. H. Walker & Co., Scherck, Stein & Franc, Inc., or any of the above named Co-Depositaries.)

Please send _____ copies of the Emerson Electric Co. Offer to Purchase shares of Dodge Manufacturing Corporation and Letter of Transmittal.

Name _____

Address _____

City _____ State _____ Zip _____

PLAINTIFF'S EXHIBIT 4.

Offer to Purchase
550,000 Shares of Common Stock of
Dodge Manufacturing Corporation
at $63 per Share
has been extended until June 16, 1967

This extension is being made in accordance with the original Offer to Purchase, dated May 22, 1967. Emerson Electric invites tenders of 550,000 shares of Common Stock of Dodge Manufacturing Corporation for purchase at $63 per share, net to the selling stockholder, pursuant to the terms and conditions set forth in the Offer Letter, dated May 22, 1967, and the Letter of Transmittal.

The offer will terminate at 5:00 p. m., Chicago Time, on June 16, 1967, unless extended.

A restraining order which prohibited the acceptance of shares tendered was dissolved by the United States District Court for the Northern District of Indiana on June 8, 1967, Emerson Electric Co. is free to accept all shares tendered in accordance with the terms of its offer.

All shares up to 550,000 shares tendered before the offer expires will be purchased provided at least 460,000 shares are tendered. If less than 460,000 shares are tendered, none or all or a portion of the shares tendered may be purchased. If more than 550,000 are tendered, none or all or a portion of the excess shares may be purchased.

If less than all shares tendered by 5:00 p.m., Chicago Time, June 16, 1967, are to be purchased, such shares will be selected, first from among those shares validly tendered to and including June 2, 1967, and next, from among the shares validly tendered on and after June 5, 1967 in the order received by the Co-Depositaries.

Copies of the Offer Letter and Letter of Transmittal may be obtained through any broker or bank or from

First National Bank of Chicago
38 South Dearborn Street
Chicago, Ill. 60690
(312) FR 2-6800

Marine Midland Grace Trust
Company of New York
140 Broadway
New York, N. Y. 10015
(212) 797-8200

G. H. Walker & Co.
Room #1054
203 South La Salle Street
Chicago, Ill. 60604
(312) 782-0551

St. Louis Union Trust Co.
510 Locust Street
St. Louis, Mo. 63101
(314) CE 1-9800

G. H. Walker & Co.
Broadway and Locust
St. Louis, Mo. 63101
(314) CE 1-3000

Scherck, Stein & Franc, Inc.
408 Olive Street
St. Louis, Mo. 63102
(314) GA 1-0225

Emerson Electric Co. has retained G. H. Walker & Co. and Scherck, Stein & Franc, Inc., to act as Dealer-Managers to solicit tenders through securities dealers. Any member of a national securities exchange or of the National Association of Securities Dealers, Inc. (or any foreign dealer not eligible for membership in such Association who has agreed to conform to the Rules of Fair Practice of such Association) which has solicited and obtained the tender of shares and whose name appears on the Letter of Transmittal accompanying said shares will receive a fee of 90c for each share purchased under this offer.

G. H. Walker & Co. Scherck, Stein & Franc, Inc.

June 12, 1967

PLAINTIFF'S EXHIBIT 5.

St. Louis Post-Dispatch
Tuesday—May 23, 1967

Business News

Dodge to Advise Rejection of Bid

Special to the Post-Dispatch

Mishawaka, Ind., May 23—The board of directors of Dodge Manufacturing Corp. will counsel its shareholders not to accept a tender offer of $63 per share of common stock as proposed by the Emerson Electric Co. of St. Louis, Mo.

J. Allan MacLean, Dodge president, said a special meeting of the board was called Monday afternoon to consider the planned Emerson tender offer which was reported unexpectedly in newspapers Monday.

Although the Dodge board has no information to indicate when the Emerson offer actually will be made, MacLean said, the directors are convinced that the price to be offered is too low and should not be accepted by Dodge shareholders. He pointed out that capital gains realized through such a transaction would be subject to federal tax.

In recommending rejection of the tender offer at this price, the directors said they took into account the fact that annual sales of Dodge products for the last fiscal year were up 80 per cent over five years ago and that earnings were 170 per cent higher. Dividends have increased from 75 cents to $1.80 per share on an annual basis, and the market price of Dodge common stock has tripled since 1961.

Currently, the Dodge management said, it is actively exploring two tax-free merger possibilities and it has several acquisitions under active consideration as well.

PLAINTIFF'S EXHIBIT 6.

The Wall Street Journal
Tuesday—May 23, 1967

Dodge Mfg. Directors Urge Holders to Reject Emerson Electric Offer

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By a Wall Street Journal Staff Reporter

Chicago—Directors of Dodge Mfg. Corp. last night urged shareholders to reject a proposed tender offer from Emerson Electric Co., St. Louis, of $63 a share for Dodge stock.

In trading on the New York Stock Exchange yesterday, Dodge stock leaped to $61 a share, up $16.25 from Friday's close.

Emerson Electric disclosed its plans for the offer over the weekend. J. Allan MacLean, Dodge president, said after the meeting of Dodge directors yesterday that the Dodge board is convinced the price is too low and should be rejected by shareholders.

He said that capital gains realized through such a transaction would be subject to Federal tax.

In taking its position, the Dodge board said that annual sales of Dodge products in its latest fiscal year were up 80% over five years ago and that earnings were up 170% in the same span. Dividends have risen to $1.80 a share annually from 75 cents a share five years ago, directors said.

Sunday night, Dodge said that it has resumed preliminary merger talks with several companies and that it was continuing acquisition talks with some smaller concerns. Last night, Dodge said it was exploring two tax-free merger possibilities and several acquisitions.

Dodge said that since it was confident the company's progress will continue it would discourage the tender offer.

Emerson had previously submitted a merger proposal to Dodge directors on Feb. 28, but those talks were later broken off.

In its latest offer, Emerson said it was seeking up to 550,000 Dodge shares. Emerson said that the offer was contingent on at least 460,000 Dodge shares being tendered but that Emerson reserved the right to purchase all shares, regardless of the number being tendered. If Emerson were to receive 550,000 Dodge shares at $63 each, the value of the transaction would be $34,650,000. Dodge had 1,114,482 shares outstanding as of March 31.

Dodge, a Mishawaka, Ind., maker of bearings, drives, couplings and other devices for power transmission equipment, in the third quarter ended March 31, earned $970,784, or 84 cents a share, on sales of $11,172,003.

PLAINTIFF'S EXHIBIT 7.

Dodge Manufacturing Corporation
Mishawaka, Indiana
May 24, 1967

Executive Offices

To All Dodge Shareholders:

A St. Louis concern, Emerson Electric Co., has issued a tender offer for 550,000 shares of Dodge common stock. We strongly urge you **not to accept** this offer: it is too low. It has been made on a straight "pro rata" basis—not first come, first served—which means that there is absolutely no benefit to you in accepting the offer at this time.

Your Board of Directors met Monday, May 22, to discuss the Emerson proposal. It considered these facts:

A tax-free exchange of stock would be better for our stockholders: the Emerson offer of $63 would involve capital gains tax

Several major companies have approached us for a tax-free merger; we are actively negotiating with two of them

The directors are confident that we can develop a more attractive **tax-free** proposal

In urging that you not accept this offer now, the directors also emphasize these facts:

Dodge sales for fiscal 1966 were up 80% over those of five years ago

Earnings were 170% higher in the same period

Dividends have increased from 75 cents to $1.80 per share on an annual basis

The market value of your stock has tripled since 1961

The long-term future of Dodge looks very good indeed

The Dodge directors will meet again shortly, to further evaluate various proposals, and we will send you the Board's recommendations before the June 2 expiration date of the Emerson offer.

We therefore urge that you **not tender** your stock at this time. **No director or officer will tender** any stock. Please await further recommendations from the directors.

Sincerely yours,

By Order of the Board of Directors

/s/ J. A. MacLean

J. A. MacLean

President

PLAINTIFF'S EXHIBIT 8.

Dodge Manufacturing Corporation
Mishawaka, Indiana
May 25, 1967

To All Dodge Shareholders:

The attached statement regarding a Dodge merger with The Reliance Electric and Engineering Company was released to the news services and the financial community this afternoon. As I assured you yesterday, we are reporting this to you immediately. It has the strong support of the directors of your company and presents an extremely attractive tax-free merger proposal.

Your Dodge directors recommend this proposal to you without qualification. The managements are proceeding at once with the preparation of the formal merger agreement, which will be presented to shareholders for approval.

You are urged to adopt the recommendation of the Dodge Board and to refrain from taking any action with respect to the recent tender offer.

Sincerely yours,

By Order of the Board of Directors
/s/ J. A. MacLean
J. A. MacLean
President

Enclosure

STATEMENT RELEASED TO THE PRESS BY
DODGE MANUFACTURING CORPORATION
MAY 25, 1967

The Reliance Electric and Engineering Company, Cleveland, Ohio, and Dodge Manufacturing Corporation, Mishawaka, Indiana, have reached an agreement in principle for the merger of Dodge into Reliance, it was announced jointly today by Hugh D. Luke, president of Reliance, and J. Allan MacLean, president of Dodge.

Tentative approval of the proposal was given by the Dodge directors at a special meeting in Mishawaka this afternoon.

The agreement calls for each Dodge share to be exchanged for one share of new cumulative convertible preferred stock of Reliance which would carry a $2.50 annual dividend rate, be convertible into 1.4 shares of Reliance common stock, be non-callable for 5 years, and callable thereafter at $70 per share. The merger would be a tax-free transaction for Federal income tax purposes.

Mr. MacLean said today that the proposed merger would be in the best interests of the Dodge shareholder, as it was a tax-free transaction, and would result in Dodge shareholders receiving securities having greater value than the recent cash tender offer of $63, which would be taxable. The $2.50 dividend rate on the new preferred shares would be $.70 above the $1.80 annual rate presently paid on Dodge shares.

The formal merger agreement would be subject to approval of the boards of directors of both companies, and would also require approval of shareholders of both companies.

Reliance manufactures electric motors, generators, Master gearmotors, Reeves drives, all-electric adjustable speed drives, etc., with plants in Cleveland and Ashtabula, Ohio, and Columbus and Madison, Indiana.

Reliance reported net sales of $118,935,000 for fiscal 1966, and net earnings of $7,902,000, equal to $2.69 per share on 2,936,105 shares of common stock outstanding October 31, 1966.

Dodge, which manufactures mechanical power transmission equipment, reported net sales of $42,936,000 in fiscal 1966, and earnings of $4,004,000, equal to $3.52 a share on 1,137,182 common shares outstanding June 30, 1966.

PLAINTIFF'S EXHIBIT 9.

St. Louis Post-Dispatch
Friday—May 26, 1967

Business News
Finance * Industry
Reliance, Dodge Agree to Merge

Cleveland, O. (AP) — A merger agreement has been reached by Reliance Electric Co., Cleveland and Dodge Manufacturing Corp., Mishawaka, Ind., with Reliance as the surviving firm, officials of the two companies announced yesterday.

The agreement calls for each share of Dodge stock to be exchanged for one share of a new cumulative, convertible preferred stock of Reliance which would carry a $2.50 annual dividend rate. The new stock would be convertible into 1.4 shares of Reliance common stock, be noncallable for five years and be callable thereafter at $70 a share.

J. Allan MacLean, president of Dodge, said the merger would be a tax-free transaction and would result in Dodge shareholders receiving securities having greater value than the recent Emerson Electric Company's cash tender of $63 which would be taxable.

The merger agreement is subject to approval of the directors and shareholders of both companies.

Emerson today said the Reliance offer amounted to $51 a share of Dodge stock. Reliance closed yesterday at $37 a share.

Today, however, Reliance Electric sold at about $40 a share.

Emerson for the first time revealed the terms of its offer on Feb. 28 to merge with Dodge. "Emerson offered Dodge an exchange of stock merger proposal having a value of $62.50 per Dodge share. Dodge directors refused Emerson's offer and demanded $72 per share for Dodge," the statement said.

"Why was Emerson's prior offer to merge kept from Dodge stockholders?" Emerson asked. It said it was continuing to offer $63 a share for Dodge stock.

PLAINTIFF'S EXHIBIT 10.

Civil Action No. 4023.

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

Dodge Manufacturing Corporation, 500 South Union Street, Mishawaka, Indiana, an Indiana corporation,

Temple Williams, 910 Lincoln Way East, Mishawaka, Indiana,

John R. Wood, Jr., 3002 Robinhood Lane, South Bend, Indiana,

Plaintiffs,

v.

Emerson Electric Co., a Missouri Corporation,

Defendant.

VERIFIED COMPLAINT

Plaintiffs allege as follows:

1. The jurisdiction of this Court to hear this Complaint is based upon the original and exclusive jurisdiction of the Court in respect of violations of the Securities Exchange Act of 1934, as amended (The "Act"), 15 U. S. C., §§ 78a-78jj, or the rules and regulations thereunder, and of all suits in equity and actions at law brought to enforce any liability or duty created by said Act or the rules and regulations thereunder. 15 U. S. C., § 78aa. This controversy involves, inter alia, § 10 of the Act (15 U. S. C., § 78j) and Reg., § 240.10b-5 ("Rule 10b-5") promulgated by the Securities and Exchange Commission thereunder.

2. Plaintiff Dodge Manufacturing Corporation ("Dodge") is an Indiana corporation with principal offices located in Mishawaka, Indiana. Dodge has been and is being subjected to continued harassment by Defendant, and seeks the relief herein prayed for to permit

it to act in the best interests of the Corporation and its shareholders and to protect their rights as hereinafter set forth. Plaintiffs Temple Williams and John R. Wood, Jr. own, respectively, 2400 and 1000 shares of the common stock of a par value of $2.50 per share, of Dodge. Plaintiffs other than Dodge bring this action for themselves and as a class pursuant to Rule 23, Federal Rules of Civil Procedure, in behalf of all owners of shares of such common stock ("Dodge Common").

3. Defendant Emerson Electric Co. ("Emerson") is a Missouri corporation with executive offices located in St. Louis, Missouri and is engaged in the business of manufacturing electrical and electronic products, systems and controls for industrial, commercial and other applications.

4. Dodge, which has its executive offices at 500 South Union Street, Mishawaka, Indiana, is a manufacturer of mechanical power transmission equipment. It was incorporated in the State of Indiana in 1935, and since that time has maintained its executive offices and major manufacturing facilities in Mishawaka, Indiana. For the fiscal year ended June 30, 1966, its net sales were $42,936,150, and its net income was $4,004,149. At January 30, 1967 there were 1,144,062 shares of Dodge Common outstanding and Dodge had more than 3100 shareholders, over 38% of whom were small shareholders owning less than 100 shares each. More than 38% of the shares were held by residents of Indiana and they owned, in the aggregate, nearly 410,652 shares of Dodge Common at that date.

5. (a) On Sunday, May 21, 1967, Emerson's shareholders, without any notice to the officers or directors of Dodge, issued a press release to *The Wall Street Journal*, a newspaper printed and having substantial circulation in the Northern District of Indiana, announcing, among other things, that it "plans to make a tender of $63 a share to holders of Dodge Mfg. Co., Mishawaka, Ind. for up to 550,000 Dodge shares," and said press release further stated that it was the "full intention to maintain Dodge

operations at the present Mishawaka-South Bend location and to continue company's current policies, practices and employment." Said news release was published in the Monday, May 22, 1967 edition of *The Wall Street Journal.*

(b) On May 24, 1956 and again on May 26, 1967, Emerson caused to be published in the *Chicago Tribune,* received by many persons in the Northern District of Indiana, a document styled "Offer to Purchase" for the purpose of attempting to obtain controlling interest of Dodge. A copy of said "Offer to Purchase" as it appeared in said *Chicago Tribune* on May 24, 1967 is attached hereto and made a part hereof. On May 23, 1967 Emerson issued a press release in which it stated that "we are interested in Dodge as a long term investment."

(c) Emerson caused to be published on May 24, 1967 and on May 26, 1967 in the Midwest Edition of *The Wall Street Journal* a document which purports to be identical to the "Offer to Purchase" referred to in Paragraph 5(b) hereof.

6. As hereinafter set forth, the statements of Emerson quoted or referred to in Paragraphs 5(a), (b) and (c) hereof are in violation of § 10 of the Act and of Rule 10b-5. For example,

(a) In April of 1966 the officers of Emerson approached the officers of Dodge for the purpose of initiating negotiations for the merger of the two corporations; thereafter, and especially during the months of August, 1966, through March of 1967, the officers of Emerson and the officers of Dodge, individually and/or collectively, met on numerous occasions to determine whether or not they could negotiate an arrangement whereby Emerson would acquire all or substantially all of the Dodge Common. During these meetings and negotiations, Emerson repeatedly made the positive assertion and representation that under no circumstances would Emerson ever make a tender offer to the shareholders of Dodge. Such representation was reaffirmed by Emerson as recently as May 16, 1967. In reliance on these repeated assertions and representations,

the officers and directors of Dodge permitted Emerson to have access to and thorough knowledge of Dodge manufacturing techniques and procedures, Dodge engineering, developmental and design facilities and techniques, Dodge sales data and distribution policies, procedures and philosophy, Dodge financial structure, and Dodge policies for motivation of employees throughout the organization from top management down. This latter includes incentive programs, deferred compensation, stock option plans, etc., which Dodge management considers essential in securing maximum employee performance and efficiency. Said negotiations terminated during the latter part of the month of February, 1967, when the officers of Dodge determined that the proposal by Emerson was inadequate; the officers of Dodge then submitted a counterproposal to Emerson which was rejected by Emerson; thereafter, Emerson requested the opportunity to appear before the Board of Directors of Dodge at a special meeting called for the purpose of re-submitting its earlier offer directly to the Board of Directors of Dodge. Such a meeting of the Board of Directors of Dodge was called and held on February 28, 1967, at which meeting all of the directors of Dodge were present with the sole exception of S. B. Hainsworth, who was then in England. Emerson did re-submit its proposal for the acquisition of the stock of Dodge directly to the Board of Directors and, after lengthy deliberations, the Board of Directors of Dodge on March 12, 1967 rejected the proposal of Emerson without a dissenting vote. Thereafter, as set forth in Paragraphs 5(a), (b) and (c) hereof, and in contradiction to its repeated assertions and representations, Emerson did make a tender offer to the shareholders of Dodge.

By virtue of its assertions and representations set forth above, Emerson obtained from Dodge confidential information of a nature customarily restricted to officers and directors of Dodge and not normally available otherwise. Emerson's tender offer to the Dodge shareholders is undoubtedly based upon such confidential information not disclosed by it in the offer.

(b) Emerson omitted to disclose the material facts relating to the amount of money which would be required to be borrowed by it in order to purchase 550,000 shares of Dodge Common at the offer price, and that its reasonably anticipated interest cost would be approximately twice its reasonably anticipated dividend yield from such shares. Ordinary standards of business prudence make it impossible to reconcile such facts with the statements of Emerson quoted or referred to in Paragraphs 5(a), (b) and (c) hereof.

(c) Notwithstanding Emerson's statement in its press release quoted in Paragraph 5(a) hereof to the effect that it has full intention to "maintain Dodge operations at the present Mishawaka-South Bend location and to continue company's current policies, practices and employment," on March 23, 1967, Emerson made the following derogatory statement about Dodge management to *The Wall Street Journal:* "It is regrettable that Dodge management did not see fit to give Dodge shareholders an opportunity to accept or reject what we felt was an attractive offer." Emerson has made equally derogatory remarks as hereinafter set forth in Paragraph 8(d). As a result of the conflicting and ambiguous statements of Emerson set forth above, Emerson has omitted to state categorically what its true policy will be with respect to the present Dodge management if Emerson acquires controlling interest of Dodge.

7. The "Offer to Purchase" and the press release set forth in Paragraph 5(a) further violate § 10 of the Act and Rule 10b-5 in at least the following respects:

(a) Emerson omitted to state the number of shares of Dodge which it presently owns, the extent to which it has acquired or is acquiring or is now negotiating to acquire or intends to acquire, shares of Dodge other than pursuant to the Offer to Purchaser, and whether it has any present plan or intention of making any other offer at the stated price or any other price per share or on any other terms or conditions.

(b) The Offer to Purchase in May 24, 1967 and May 26, 1967 Midwest Edition of *The Wall Street Journal* and the May 24, 1967 and May 26, 1967 editions of the *Chicago Tribune* states that the closing price on May 19, 1967 of Dodge Common on the New York Stock Exchange was $44.75. Such Offer to Purchase fails to state (i) that on May 22, 1967 and May 23, 1967, and prior to the publication by Emerson of its Offer to Purchase in the form carried in *The Wall Street Journal* and the *Chicago Tribune* as above stated, the price of Dodge Common on the New York Stock Exchange had already reached a price in excess of $60 per share (although Emerson had adequate time within which to ascertain and publish such prices); (ii) that there had been prior merger negotiations between Emerson and Dodge which had been terminated when Dodge declined to recommend to its shareholders the previous offer made by Emerson which, in the opinion of the Board of Directors of Dodge, was inadequate; all of which is material in forming a prudent investment judgment with respect to the Offer to Purchase.

(c) The Offer to Purchase by its terms expires on June 2, 1967, thereby giving Dodge shareholders, at most, seven (7) business days within which to decide whether to sell their shares; and even then the shareholders must first obtain a Letter Offer and a Letter of Transmittal from a broker or bank designated by Emerson. This arbitrary and unreasonably short space of time is wholly inadequate to permit shareholders to make an informed judgment as to whether or not to tender their shares.

8. Unless restrained by this Court, such action by Emerson, as set forth herein, will result in irreparable loss and damage to Dodge and its shareholders in that:

(a) The officers and directors of Dodge are and will be effectively prevented by Emerson in exercising their fiduciary responsibilities to the shareholders of Dodge in an independent manner free from coercive restraints imposed by Emerson, including the consideration of proposals of merger from other national corporations.

(b) The shareholders of Dodge are and will be effectively prevented from exercising their best judgment with respect to the disposition of their shareholdings unless and until the officers and directors of Dodge are permitted to advise them in detail with respect to the tender of offer made by Emerson, together with information pertaining to any proposed mergers, which, in the opinion of the officers and directors of Dodge, should be presented to the shareholders.

(c) Dodge has reached an agreement in principle for the merger of Dodge into Reliance Electric and Engineering Company, of Cleveland, Ohio, which is and will be jeopardized by the aforementioned action of Emerson.

(d) Emerson continues to issue statements to the press characterizing and commenting upon the action of the Board of Directors of Dodge as set forth in Paragraph 6(c) above and as set forth in the news release issued by Emerson on Friday, May 26, 1967, to wit:

> "The Dodge Directors are taking steps toward breaking the status quo of Dodge as an independent manufacturer. However, their position on values of Dodge shares was an astounding change. On February 28, Emerson offered Dodge an exchange of stock merger proposal having a value of $62.50 per Dodge share. Dodge directors refused Emerson's proposal and demanded $72 per share for Dodge.
>
> We have not had an opportunity to study Reliance offer in detail. However, assuming that the 58 million exchange price was released by Dodge, this, divided by the 1,137,182 shares stated as outstanding, would show a value of $51 per Dodge share.
>
> Emerson must now ask what lies behind the Dodge directors change of position on values. Why was the Emerson prior offer to merge kept from Dodge stockholders?
>
> We feel the Emerson tender offer of $63 is most generous to Dodge shareholders and we are continuing the offer."

Wherefore, Plaintiffs Pray,

1. That the Court issue a temporary restraining order and preliminary injunction enjoining Defendant Emerson, its officers, agents, servants, employees and attorneys, and all persons in active concert or participation with them who receive actual notice of said injunction by personal service or otherwise, from:

(a) Taking any action in connection with the Offer to Purchase, including accepting any tenders in response to the Offer to Purchase received after issuance of a temporary restraining order or other order of the Court;

(b) Failing, forthwith upon the issuance of such temporary restraining order or other order of the Court, to offer, to all persons who shall have tendered shares of stock of Plaintiff Dodge pursuant to the Offer to Purchase, the right to rescind such tenders without penalty;

(c) Failing to return any stock certificates received in response to the Offer to Purchase after issuance of such temporary restraining order or other order of the Court;

(d) Until further order of the Court, renewing the Offer to Purchase or making any other offer to purchase shares of stock of Dodge.

2. That following a hearing on the merits of this case, the Offer to Purchase be held invalid, and the Court issue an injunction enjoining Defendant Emerson, its officers, agents, servants, employees and attorneys, and all persons in active concert or participation with them who receive actual notice of said injunction by personal service or otherwise, from:

(a) Taking any action in connection with the Offer to Purchase, including accepting any tenders in response to the Offer to Purchase;

(b) Failing to return any stock certificates received in response to the Offer to Purchase;

(c) Renewing the Offer to Purchase or making any other general offer to purchase Dodge shares unless said offer is made fairly and reasonably as among the various shareholders of Dodge, and includes complete disclosure of:

(1) The method of financing, including the amount, source and each material term and condition of such financing used or to be used in order to carry out the proposed purchases of shares of stock of Dodge;

(2) Defendant's most recent annual report to shareholders, including financial statements contained therein;

(3) A pro forma balance sheet of Defendant as of the most recent date for which figures are available, giving effect to its proposed acquisition of Dodge shares;

(4) Plans of Defendant with respect to the number, membership and activities of the Board of Directors of Dodge and the Executive Committee thereof;

(5) Plans of Defendant with respect to any changes in the number, identity, activities, responsibilities and authority of the officers of Dodge;

(6) Plans, agreements or understandings of Defendant with respect to reorganizations or rearrangements involving or affecting the business, property, affairs or corporate organization of Dodge or respecting any acquisitions by Dodge;

(7) Each other material fact necessary in order to make the statements made (or to be made) in said offer under the circumstances under which they were or are made not misleading.

3. That the Court award Plaintiffs reasonable attorneys' fees and their costs and disbursements herein.

4. That the Court grant Plaintiffs such other and further relief as may be just and proper in the circumstances.

Oare, Thornburg, McGill & Deahl
By Edward J. Gray
By Franklin A. Morse II
645 First Bank Building
South Bend, Indiana

Of Counsel:

Hopkins, Sutter, Owen, Mulroy, Wentz & Davis
One North LaSalle Street
Chicago, Illinois

State of Indiana)
St. Joseph County) ss.

J. Allan MacLean, being first duly sworn, deposes and says that he is the President and chief executive officer of Dodge Manufacturing Corporation, one of the Plaintiffs in the within action; that he has read the foregoing Complaint; that the allegations and statements therein are true; that he is authorized by Dodge Manufacturing Corporation so to state, and that he makes this statement for and on behalf of Dodge Manufacturing Corporation and is authorized by it so to do.

/s/ J. Allan MacLean
J. Allan MacLean

Subscribed and sworn to before me this ___ day of May, 1967.

Notary Public

My commission expires: _____

Civil Action No. 4023.

IN THE UNITED STATES DISTRICT COURT

Northern District of Indiana,
South Bend Division

Dodge Manufacturing Corporation et al.,
Plaintiffs,

v.

Emerson Electric Co.,
Defendant.

ORDER

(Filed June 8, 1967)

On June 2, 1967, this matter came on for hearing on plaintiffs' application for preliminary injunction. A temporary restraining order had been granted on May 27, 1967. The Court has heard the evidence, and adjourned to consider the matter. Having now carefully reviewed the record and in view of the authorities cited by the parties, the Court does now find and determine that the temporary restraining order heretofore granted should be dissolved and that the application for preliminary injunction should not be granted.

It is, therefore, Ordered that the temporary restraining order heretofore granted herein be, and the same is, hereby dismissed and dissolved, and

Ordered Further that plaintiffs' request for a preliminary injunction be, and the same is, hereby, Denied.

Any assessment of costs deemed to be necessary herein will be determined at the subsequent hearing on the pending application for Rule to Show Cause.

Robert A. Grant
Judge

Entered: June 8, 1967

Memorandum

The complaint in this case was brought by Dodge Manufacturing Corporation (Dodge) on its own behalf and on behalf of the shareholders of Dodge, and by Temple Williams and John R. Wood, Jr., shareholders of Dodge, proceeding "for themselves and as a class pursuant to Rule 23 . . . on behalf of all owners of shares of such common stock." The named defendant is Emerson Electric Co. (Emerson), a Missouri corporation. The suit was instituted under the provisions of Section 27 of the Securities Exchange Act of 1934 (15 U. S. C., § 78aa), alleging a violation of Section 10(b) of that Act (15 U. S. C., § 78j) and Rule 10b-5 promulgated thereunder. We have limited our consideration, therefore, to that evidence which would tend to prove such a violation.[1] Finding none, we must deny relief.

The pertinent statutory and regulatory provisions read as follows:

(1) Section 10(b):

"It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange—(b) to use or employ, in connection with the purchase or sale of any security registered on a national securities exchange . . . any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors."

(2) Rule 10b-5:

"It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any

---

[1] A substantial amount of evidence, to which reference will later be made in this memorandum, was unrelated to the Section 10(b) issue.

> facility of any national securities exchange—(b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security."

In this Court's view, the plaintiffs were put to the burden of showing that Emerson's May 22, 1967, Offer to Purchase certain shares of Dodge common stock was misleading in a material respect, whether by affirmative statement or by omission.

Emerson's offer to Dodge shareholders is embodied in three written documents: (1) The official public advertisement first printed in various newspapers on May 24, 1967; [2] (2) the Offer Letter, dated May 22, 1967; [3] (3) the Letter of Transmittal, which accompanied the Offer Letter, and which was the form to be used by any shareholder wishing to declare his stock available for the tender.[4] The advertisement referred to, and incorporated therein, the last two mentioned documents.

In substance, the offer invited tenders of 550,000 shares of Dodge common stock for purchase at $63.00 per share net to the tendering shareholders, payable in cash. The offer, dated May 22, 1967, by its terms, expired on June 2, 1967, at 5:00 P. M., Chicago time, unless extended by Emerson. All tenders were irrevocable until accepted or rejected. The Offer Letter quoted the yearly high and low prices for Dodge comon stock during 1964-66, and for the shorter period in 1967 through May 19, the last trading day prior to the date of the Offer Letter.

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[2] First exhibit attached to the complaint.

[3] Plaintiffs' Exhibit 10.

[4] Plaintiffs' Exhibit 11.

The complaint contains numerous allegations of items which plaintiffs contend were omitted from the "tender offer" documents. Unquestionably such items were omitted, but there was a complete failure of proof that the omissions were, "in the light of the circumstances," misleading. Representative of this class of allegation (with no supporting evidence) are the following:

(1) "Emerson omitted to state the number of shares of Dodge which it presently owns"—there was no evidence to show that Emerson owned any shares;

(2) "Emerson omitted to state the extent to which it has acquired or is acquiring or is now negotiating to acquire or intends to acquire, shares of Dodge other than pursuant to the Offer"—no proof was offered as to Emerson's intentions, nor any intimation how this was misleading;

(3) "Emerson omitted to state whether it has any present plan or intention of making any other offer at the stated price or any other price per share or on any other terms or conditions"—again the plaintiffs made no effort to show that Emerson's failure to state its intentions in this regard could possibly be misleading;

(4) Emerson failed to state "that there had been prior merger negotiations between Emerson and Dodge which had been terminated when Dodge declined to recommend to its shareholders the previous offer made"—this omission was clearly immaterial in view of the fact that the Dodge management itself conveyed this information to its own shareholders by letter at least four weeks prior to the Emerson tender offer (Defendant's Exhibit No. 9);

(5) "Emerson omitted to disclose the material facts relating to the amount of money which would be required to be borrowed by it in order to purchase 550,000 shares of Dodge common at the offer price"—Plaintiffs made no attempt to substantiate this alle-

gation by proof that such information would be material to prospective sellers of stock.

Much of the testimony presented at the three-day hearing concerned certain alleged "confidential information" which Emerson is said to have acquired as a result of the prior merger negotiations between Dodge and Emerson. On April 20, 1966, representatives of Dodge and Emerson had their first meeting at the Dodge plant in Mishawaka, Indiana, to initiate discussions concerning the merger of Dodge into Emerson. Following a forenoon of discussions, the representatives of both parties went out together for lunch, traveling several miles to a South Bend club. Plaintiffs sought to show that during that afternoon, the Emerson representatives returned to the Dodge plant in Mishawaka where they were conducted through the Dodge facilities, including the research and development laboratories where certain new products were undergoing tests. Dodge's President described these as highly confidential revelations. However, the Emerson personnel categorically denied that such a tour ever occurred. This denial was supported by the introduction into evidence of the airplane pilot's log sheet for that date (Defendant's Exhibit No. 44) from the Emerson company plane, which indicated that the Emerson aircraft departed the South Bend airport that afternoon with the Emerson personnel aboard at 1:26 P. M. (Although the record is unclear at this point, this was probably 2:26 P.M., South Bend time.)

A series of meetings and conferences followed concerning the proposed merger, terminating on March 12, 1967, when the Dodge directors rejected the Emerson offer. The President of plaintiff Dodge testified that at various times throughout this period, he had disclosed to Emerson such information as a five-year forecast of Dodge earnings, reports on foreign operations, details of stock option and executive compensation plans, and sales and distribution policies. Emerson in rebuttal asserted that most of this information was publicly available dur-

ing and even prior to the merger negotiations, and that these public sources had been utilized by them in gathering data on Dodge. Evidence was adduced that Emerson had been considering a merger with Dodge for some time prior to April 20, 1966, and had engaged a business consultant to make an independent evaluation of that company. An important reference in this evaluation was Dodge's detailed 21-page Listing Application to New York Stock Exchange, dated November 30, 1964 (Defendant's Exhibit No. 32). This included an extensive catalog of Dodge property, foreign affiliation, stock option plan and financial reports. Further investigation and study included the Dodge 1966 Annual Report to Stockholders (Defendant's Exhibit No. 33), and the October 18, 1966, proxy statement (Defendant's Exhibit 33A).

Reason and experience support Emerson's position that it did not obtain confidential information from Dodge personnel. The merger talks never moved beyond the informal stages. At a November 10, 1966, meeting in St. Louis, Dodge was first presented with a form of preliminary written agreement called Outline Memorandum (Defendant's Exhibit No. 46), which set forth the understanding of the Boards of Directors of Emerson and Dodge. This Memorandum called for the execution of a formal Plan and Agreement of Reorganization, and prior hereto extended to Emerson the opportunity to make a thorough examination of the operations, contracts, agreements, loan agreements, assets, liabilities, past experience and future prospects of Dodge. Consummation of the Agreement was conditioned upon Emerson's "being reasonably satisfied with the results of such examination." Inasmuch as the parties never did execute this Outline Memorandum, such contemplated examination was never made and the compelling inference, when viewed in the light of all the other evidence on the point, is that Emerson was not in possession of confidential information on May 22, 1967.

It is the Court's conclusion, therefore, that Emerson was not possessed of "insider" information, placing it on unequal footing with prospective sellers under its tender offer. There is no doubt that Emerson had a sophisticated understanding of the worth of Dodge, perhaps an understanding superior to that of the average Dodge shareholder, but we find that this was obtained by a diligent and searching inquiry of public documents. Such industry is not, however, prohibited by Section 10(b).

Finally, Dodge offered testimony through its officers and directors that Emerson representatives had repeatedly asserted that Emerson would not make a tender offer to Dodge shareholders. In reliance upon these assertions, Dodge claims to have disclosed the alleged "confidential information." This alleged breach, standing alone, presents no claim under Section 10(b). Such evidence might be relevant to prove that Emerson breached a confidence then allegedly existing with Dodge, but the common law, not Section 10(b), provides the remedy for breach of a confidential relationship. However, since we find that no such information passed from Dodge to Emerson, there is no need to rest upon this technical distinction. There has been no breach of trust here.

The plaintiffs in this case have failed to satisfy their burden of proof to this Court that they are entitled to a preliminary injunction. It is not difficult to understand their concern over a proposal which, if successful, will transfer control of Dodge to Emerson. A tender offer, however, in and of itself, does not constitute an illegal method when an outsider challenges the existing corporate control. It may be a harsh reality of the market place, but it is not unlawful. In all fairness to the defendant, however, the Court must say that the course of dealing revealed by the evidence herein demonstrated ethical conduct on both sides, and no criticism to either party is hereby intended.

The Court concludes that the plaintiffs have failed to sustain their burden of proving their entitlement to a temporary injunction based upon the alleged violations by

defendant of Section 10(b) and Rule 10b-5 promulgated thereunder. Accordingly, the application for temporary injunction must be denied.

PLAINTIFF'S EXHIBIT 11.

5/27/67

To All Dodge Shareholders:

On Saturday May 27, 1967 the District Court of the United States for the North District of Indiana, South Bend Division, granted our request for a temporary restraining order against Emerson Electric Co. of St. Louis, Missouri, pending a hearing on a preliminary injunction which will be held Friday, June 2, 1967 at 2:00 P.M.

The order restrains Emerson Electric Co. from taking any action whatsoever in connection with Emerson's offer to purchase shares of stock of Dodge Manufacturing Corporation, including:

(1) Further publicizing such offer in the newspaper or otherwise,

(2) Accepting any tenders in respect to any such stock,

(3) Renewing the offer or making any other offer to purchase shares of stock of Dodge Manufacturing Corporation.

Enclosed for your further information is a copy of the order of the Court.

Sincerely yours

By order of the board of directors
J. A. MacLean, President

PLAINTIFF'S EXHIBIT 12.

Dated: May 29, 1967

To All Dodge Shareholders:

As indicated to you in our May 27 letter and attached court order, we were successful in having a temporary restraining order issued against Emerson Electric. One of the reasons this order was issued, was Emerson's failure to state material facts in its tender offer made to our shareholders.

In addition, we believe Emerson has issued several misleading and incorrect statements in an effort to confuse. Some of these statements, especially with respect to the true value of the Reliance Electric Company's offer, have recently appeared in the press, and I would like to take this opportunity to correct their erroneous evaluation.

Any offer such as this must take into consideration several facts to produce an honest value. In studying Reliance's offer we have been advised by leading investment banking firms that the new Reliance convertible preferred stock to be received tax-free by the Dodge shareholders, represents today a value superior to the taxable cash offer by Emerson.

The investment bankers' opinion of the value takes into account:

The $2.50 dividend rate on the new preferred issue, which is 70¢ higher than the present Dodge dividend,

The combined earnings of Dodge and Reliance after the preferred dividend is paid,

The normal premium price the market places on the option to convert the new preferred shares into Reliance common shares (1.4 shares of common to one share of preferred),

The tax-free nature of the proposal.

For your information, Reliance earnings were $7,903,000, or $2.69 per share for their fiscal year ended October 31, 1966, and were $8,346,000, or $2.84 per share for the

last twelve months ended April 30, 1967. Since 1962 our sales were up 55% and earnings up 188%.

We believe the tax-free aspect of the transaction will be a major benefit to many of you. The capital gains tax on shares which might be sold to Emerson would substantially reduce a shareholder's profit.

To help you in evaluating this, we have prepared the following chart:

Your Original Purchase Price of Dodge Shares	Capital Gains Tax at 25%	Net Receivable to Dodge Shareholders
$ 5.00	$14.50	$48.50
10.00	13.25	49.75
15.00	12.00	51.00
20.00	10.75	52.25
25.00	9.50	53.50
30.00	8.25	54.75
35.00	7.00	56.00
40.00	5.75	57.25
45.00	4.50	58.50

Your board of directors, your officers and I, believe the Emerson offer to be unsatisfactory and urge you to reject it. We feel you deserve a better deal and we believe the Reliance proposal to be a better deal. Consequently, we will continue to take all necessary steps to oppose the Emerson offer.

We wish to thank the thousands of shareholders of Dodge who have already indicated their desire to remain loyal to our company.

Sincerely yours

By order of the board of directors
J. A. MacLean, President

PLAINTIFF'S EXHIBIT 14.

(Letterhead of Dodge Manufacturing Corporation, Mishawaka, Indiana)

June 12, 1967

Dear Fellow Shareholder:

Our letter of June 8, 1967 informed you of the approval by your Board of a formal merger agreement between Dodge Manufacturing Corporation and Reliance Electric Company of Cleveland.

Your Board of Directors and Management believe there would be significant advantages to you as a shareholder through this merger compared to Emerson's conditional cash offer. We again call to your attention the following important features provided in the proposed merger:

—The exchange of one share of common stock of Dodge Manufacturing for one share of cumulative convertible preferred stock of Reliance Electric Company.

—A 39% increase in dividends—$2.50 per share on the new preferred stock compared to $1.80 per share on your present common stock.

—Each share of the new cumulative preferred stock would be convertible into 1.4 shares of Reliance common stock at any time.

—The new cumulative preferred stock would be non-callable for 5 years, callable thereafter at $70 and would have one vote per share.

—The merger agreement provides for a ruling by the Internal Revenue Service that the exchange of stock is a tax-free transaction.

Reports are circulating that the Dodge-Reliance merger would require 80% support of the outstanding Dodge stock to obtain tax-free status. This is not true. Our legal counsel advise that the proposed statutory merger of Dodge and Reliance requires only 50+ percent support

of the outstanding Dodge stock in order to obtain for those shareholders exchanging their shared tax-free status under Internal Revenue Code.

Accordingly, we are convinced that your interests will best be served by retaining your investment in Dodge and rejecting Emerson's taxable cash offer.

Sincerely

By Order of the Board of Directors
/s/ J. A. MacLean
J. A. MacLean
President

PLAINTIFF'S EXHIBIT 15.

Emerson Electric Co.
8100 Florissant Avenue
St. Louis, Mo 63136

June 17, 1967

Mr. J. Allan MacLean,
President,
Dodge Manufacturing Corporation,
Mishawaka, Indiana

and

To all Members of the Board of Directors of Dodge Manufacturing Corporation

Gentlemen:

This letter supplements our letter to you of June 15, 1967, relating to the merger proposal of Emerson Electric Co. (Emerson) to Dodge Manufacturing Corporation (Dodge).

As a substantial shareholder of Dodge, Emerson desires to communicate with the other shareholders of Dodge regarding this merger proposal. For this purpose, and in order to communicate with the shareholders of Dodge

regarding the proposal that Dodge merge with Reliance Electric and Engineering Company, we request, pursuant to Section 11 of the Indiana General Corporation Act, that we be permitted immediate right to inspect, examine and copy the current list of Dodge shareholders.

We request you to advise us promptly of the time and place when we may inspect, examine and copy such list, or the time and manner in which you will supply us with a copy of same at our expense. If we do not hear from you on or before the close of business on June 23, 1967, we will assume you have refused this request.

You are hereby advised that Emerson intends to solicit proxies for the Special Meeting of Dodge shareholders scheduled to be held August 22, 1967, in opposition to the approval of the proposed merger between Dodge and Reliance Electric and Engineering Company. In this connection, will you please furnish to us all information required in order to permit Emerson to comply with applicable rules and regulations of the Securities and Exchange Commission, including, but not limited to, the information relating to Dodge required to be included in Items 14 and 15 of Schedule 14A of the SEC Proxy Rules and that required under Rule 14A-7 thereof.

Emerson hereby offers to furnish similar information relating to it should you determine to provide your shareholders the right to decide which of the two merger proposals offers them the greater economic benefit.

You are further notified that Emerson intends to present at the Special Meeting of shareholders of Dodge on August 22, 1967, the following proposal:

> Resolved, that a majority of the shareholders of Dodge Manufacturing Corporation desire the opportunity to consider the agreement of merger proposed to be entered into between Emerson Electric Co. and Dodge Manufacturing Corporation, and hereby call upon the Directors of the corporation, acting as a Board of Directors, to take all action necessary and appropriate pursuant to the provisions of Article 4 of Part 2 of the General Corporation Act of the State of

Indiana, to approve and cause to be submitted to the shareholders of Dodge Manufacturing Corporation such agreement of merger.

You are, accordingly, requested to include this proposal in your proxy material.

Very truly yours

/s/ W. R. Persons

W. R. Persons

Chairman of the Board

PLAINTIFF'S EXHIBIT 16.

Wall Street Journal—Monday, June 19, 1967

To all shareholders of
Dodge Manufacturing Corporation

The following letter and proposal were sent to Mr. J. Allan MacLean, President and all members of the Board of Directors of Dodge Manufacturing Corporation, on Thursday, June 15, 1967.

Gentlemen:

Please be advised that, pursuant to a resolution duly adopted by its Board of Directors, Emerson Electric Co. hereby offers to enter into a joint agreement of merger with Dodge Manufacturing Corporation providing for a tax-free merger of Dodge into Emerson and providing for the conversion of each share of Dodge Common Stock into one share of a new Cumulative Convertible Preferred Stock, Series B, of Emerson, having an annual dividend rate of $2.76 per share, payable quarterly, and being convertible into .9 share of Emerson Common Stock, noncallable for six years and callable thereafter at $86.00 per share, the call price declining annually at the rate of $1 each year for six years.

A copy of a formal joint agreement of merger, or articles of merger, embodying the foregoing and other pertinent provisions, duly approved by the Board of Directors of Emerson, will be forwarded to each of you within the next few days.

Such joint agreement or articles of merger will be submitted to vote at a meeting of the shareholders of Emerson duly called to be held August 18, 1967. We believe that this proposed joint agreement or articles of merger merits your favorable consideration and request that you duly approve it and submit it to a vote of your shareholders at the meeting which we are advised you have called for August 22, 1967. If you consider that you are already bound by and cannot withdraw any prior approval that you may have given to the proposed agreement of merger with Reliance Electric and Engineering Company which has been reported in the public press, then we suggest that you approve the joint agreement or articles of merger with Emerson and submit the same to a vote of the Dodge shareholders at the meeting called to be held on August 22, 1967, subject to such action as your stockholders may take on the proposed merger with Reliance. We wish to emphasize that the merger being proposed will be on a tax-free basis.

For your information, Emerson plans to offer to each of those shareholders of Dodge whose shares have been purchased by Emerson pursuant to its published Offer to Purchase the right to purchase promptly after the consummation of the merger such number of shares of the Emerson Cumulative Convertible Preferred Stock, Series B, as each of them would have been entitled to receive in the merger if he had not tendered his shares to Emerson, upon repayment to Emerson of the net price paid for his shares.

Very truly yours

W. R. Persons

Chairman of the Board

We believe that this tax-free merger proposal is in the best interest of all Dodge shareholders as well as, its management and employees. We urge you to communicate with the Directors of Dodge Manufacturing and ask that you be given the opportunity to vote on this alternative merger proposal at the meeting on August 22, 1967. *As shareholders, this right should not be denied to you.* We intend to solicit your proxy for that meeting after clearance of a definitive proxy statement by the Securities and Exchange Commission.

Emerson Electric wishes to re-emphasize that if its merger proposal is accepted, it fully intends to maintain the operations of Dodge Manufacturing in their present Mishawka-South Bend location and substantially to continue the Company's present policies, practices and employment.

Emerson Electric Co.

June 19, 1967

PLAINTIFF'S EXHIBIT 17.

Dodge Manufacturing Corporation
Mishawka, Indiana
June 20, 1967

Mr. W. R. Persons
Chairman of the Board
Emerson Electric Company
8100 Florissant Avenue
St. Louis, Missouri 63136

Dear Mr. Persons:

On Saturday, June 17, just before noon, delivery was made at my home and at my office of your letter of June 15. This will acknowledge receipt of this letter.

Your proposal to the Dodge Board, as described in your letter of June 15, will be considered by the Dodge Board in due course.

Very truly yours
/s/ J. A. MacLean
J. A. MacLean

JAM:m

PLAINTIFF'S EXHIBIT 18.

Emerson Electric Co.
8100 Florissant Avenue
St. Louis, Mo. 63136

June 21, 1967

Mr. J. Allan MacLean, President
Dodge Manufacturing Corporation
Mishawaka, Indiana

and

To all Members of the Board of Directors of Dodge Manufacturing Corporation

Gentlemen:

This letter further supplements our letter to you of June 15, 1967 and supplements our letter to you of June 17, 1967.

Enclosed herewith please find Printer's Proof dated 6/21/67 of a Plan and Joint Agreement of Merger between Emerson Electric Co. (Emerson) and Dodge Manufacturing Corporation (Dodge), which has been duly approved by our Board of Directors, and which Plan and Joint Agreement of Merger Emerson, Pursuant to resolution duly adopted by its Board of Directors on June 17, 1967, hereby offers to execute and consummate, subject to and immediately following the obtaining of such approvals as may be required by Indiana and Missouri law.

Emerson's Board of Directors has, by resolution, directed that this Plan and Joint Agreement of Merger be submitted to Emerson's shareholders at a Special Meeting called to be held on August 18, 1967, at which meeting we anticipate that Emerson's stockholders will give all approvals required by Missouri law and will take all corporate action necessary and proper to authorize the due execution and consummation of such Plan and Joint Agreement of Merger.

Furthermore, in the event that the Board of Directors of Dodge, or any officer of Dodge acting pursuant to due authorization of its Board, shall at any time duly approve

any amendment, modification or change in the proposed agreement of merger with Reliance Electric and Engineering Company (Reliance) which has been reported in the public press, or any new agreement of merger with Reliance, or any agreement for the sale of substantially all of its assets to Reliance, or any agreement of merger with, or agreement for the sale of substantially all of its assets to, any other company, the effect of which, in the opinion of Emerson, is to offer to the shareholders of Dodge a proposal which is more favorable to such shareholders than the one of Reliance which has heretofore been reported in the public press, then and in any such event Emerson reserves the right and option, but shall not be obligated, to withdraw this offer, at any time thereafter, by written notice to Dodge of its intention so to do, sent by registered mail.

We are sending this Plan and Joint Agreement of Merger to you in Printer's Proof form because it occurs to us that you may wish to suggest some changes, amendments or modifications in the language of this proposed Plan and Joint Agreement of Merger, but not affecting the substantive terms thereof, including, for example, provisions with respect to employment of officers and executives and Board representatives, in which event we will be glad to consider and discuss the same with you and make all reasonable efforts to arrive at an agreement with respect thereto.

However, if you do not have any such changes, amendments or modifications which we may agree upon, then our offer is to seek all necessary approvals required by Missouri law and, upon your obtaining such approvals as may be required by Indiana law, to duly execute and consummate this Plan and Joint Agreement of Merger in final printed form.

Very truly yours

W. R. Persons

Chairman of the Board

PLAINTIFF'S EXHIBIT 19.

Dodge Manufacturing Corporation
Mishawaka, Indiana
June 22, 1967

Executive Offices

AIRMAIL SPECIAL DELIVERY

Mr. W. R. Persons
Chairman of the Board
Emerson Electric Co.
8100 Florissant Avenue
St. Louis, Missouri 63136

Dear Mr. Persons:

Reference is made to your letter of June 17, 1967, addressed to myself and all members of the Board of Directors of Dodge Manufacturing Corporation. This response has been ordered by the Dodge Board of Directors.

In your letter, you state that Emerson intends to solicit proxies for the special meeting of shareholders of Dodge scheduled to be held August 22, 1967, in opposition to the proposed merger of Dodge into Reliance Electric Company. You request that Dodge permit Emerson to inspect, examine and copy the current list of Dodge shareholders to enable you to carry out its proxy solicitation. You also ask that Dodge furnish Emerson with the information called for by Regulation 14a-7 of the S.E.C. Proxy Rules.

This is to advise you that Dodge intends to solicit proxies from all holders of record of its common shares. There are at present approximately 3,000 such holders. Dodge further intends to make a solicitation of the beneficial owners of its common shares held in names of brokerage firms, banks, etc. Dodge does not know the number of such beneficial owners, but approximately 135 of the total number of record holders of Dodge common shares are brokerage firms, banks, etc., which may be holding such shares for one or more beneficial owners.

Dodge estimates that such beneficial owners may aggregate 1,000 persons. Finally, we are unable to give you at the present time any estimate of the cost of mailing Emerson's proxy statement, form of proxy, or other statement to such holders. However, if you will deliver to us copies of such material, we will furnish you with such a cost estimate as soon as reasonably possible. I believe that the foregoing supplies you with the information called for by Regulation 14a-7(a). In addition, in accordance with the provisions of Regulation 14a-7(b), following their clearance by the S.E.C., we will mail your proxy statement, form of proxy, or other communication to the Dodge shareholders, upon your defraying the reasonable expenses to be incurred by Dodge in doing so. Under the provisions of Regulation 14a-7(b)(2), such material need not be mailed by Dodge prior to the first day on which solicitation is made on behalf of Dodge. For your information, July 14, 1967, has been fixed as the record date for shareholders entitled to vote at the August 22 meeting. I believe that the foregoing constitutes full compliance with Regulation 14a-7 and eliminates the need for Emerson to examine the Dodge shareholders list for the purpose of communicating with the Dodge shareholders. In any event, only shareholders of record on July 14 will be eligible to vote at the meeting on August 22, so that the present list of shareholders has no materiality to proxy solicitation for such meeting.

Inasmuch as no agreement of merger between Dodge and Emerson has been approved by the Dodge Board of Directors at the present time, the information prescribed in Items 14 and 15 of Schedule 14A to the S.E.C. Proxy Rules is not required by Emerson. Accordingly, such information cannot be released to you at this time. However, in connection with the proposed merger of Dodge into Reliance Electric Company, the Dodge proxy statement will comply with the provisions of Items 14 and 15 of Schedule 14A. Emerson will receive such proxy statement as a shareholder of Dodge.

Finally, in accordance with Regulation 14a-8(c)(1) of the Proxy Rules, you are hereby notified that the proposal submitted with your letter of June 17 is not a proper subject for action by shareholders of Dodge. Accordingly, Dodge intends to omit such proposal from its proxy statement. A copy of the opinion of counsel upon which Dodge relies in this connection is enclosed.

Copies of this letter, of your letter of June 17, and of the opinion of counsel above referred to, are being mailed to the Securities and Exchange Commission in accordance with Regulation 14a-8(d).

Very truly yours,

Dodge Manufacturing Corporation
By /s/ J. A. MacLean
President

PLAINTIFF'S EXHIBIT 20.

Cause No. D-3655.

IN THE ST. JOSEPH SUPERIOR COURT DIVISION

State of Indiana, St. Joseph County, ss.

State of Indiana on the relation of Emerson Electric Co., a Missouri Corporation,

Plaintiff,

v.

Dodge Manufacturing Corporation, an Indiana Corporation, J. Allan MacLean and Karl D. Jahnke,

Defendants.

COMPLAINT

Count I

Action for Mandate

State of Indiana on the relation of Emerson Electric Co. (Emerson), relator, submits the following complaint against the above named defendants:

1. Relator is a corporation organized and existing under and by virtue of the laws of the State of Missouri, with its principal place of business and executive offices in St. Louis, Missouri.

2. Defendant Dodge Manufacturing Corporation (Dodge), is a corporation organized and existing under and by virtue of the laws of the State of Indiana, with its principal offices and place of business located in Mishawaka, Indiana.

3. Defendant J. Allan MacLean at all times referred to herein has been the President and Chief Executive Officer of Dodge. Defendant Karl D. Jahnke at all times referred to herein has been the Secretary of Dodge. De-

fendants MacLean and Jahnke are citizens and residents of Indiana. The individual defendants have authority and control over the records of Dodge, including those which contain the names and addresses of record owners and the number of shares owned of record by each shareholder.

4. Relator is and was at the time of the demand for shareholders' list hereinafter alleged a shareholder of record of common stock of Dodge and owns in excess of 100,000 shares of said stock.

5. On information and belief, approximately 1,144,000 shares of Dodge common stock are issued and outstanding, owned of record of more than 3,000 shareholders. Relator is informed and believes that it is the largest single shareholder of Dodge common stock.

6. On June 8, 1967, defendant MacLean notified all Dodge shareholders and publicly announced on behalf of Dodge that the Dodge Board of Directors had approved a formal agreement of merger with Reliance Electric and Engineering Company of Cleveland, Ohio. Defendant MacLean stated that the shareholders of Dodge would be asked by the management to approve said plan of merger at a special meeting of shareholders to be held August 22, 1967. Defendant Dodge had previously communicated with all its stockholders on occasions in May, 1967, with respect to the contemplated Reliance merger.

7. On June 15, 1967, relator mailed to Dodge and to the individual defendants a letter offering (subject to the approval of relator's shareholders) a plan for the merger of Dodge and Emerson. A copy of this letter is attached to and made a part of this complaint as Exhibit A. Said letter stated that a formal plan of merger would be forwarded to Dodge as soon as it could be prepared. On June 21, 1967, printer's proofs of the formal plan of merger thus described were forwarded to Dodge by relator, together with a covering letter. A copy of said letter of June 21, 1967, is attached to and made a part of this complaint as Exhibit B.

8. Relator has not received any response from defendants concerning whether they propose to accept or reject relator's said offer of merger.

9. On June 17, 1967, relator mailed to defendants a letter advising them that relator intends to solicit proxies for the special meeting of Dodge shareholders scheduled to be held August 22, 1967, (a) in opposition to approval of the proposed merger between Dodge and Reliance Electric and Engineering Company, and (b) in support of the following proposal to be submitted by relator at said special meeting of shareholders:

> Resolved, that a majority of the shareholders of Dodge Manufacturing Corporation desire the opportunity to consider the agreement of merger proposed to be entered into between Emerson Electric Co. and Dodge Manufacturing Corporation, and hereby call upon the Directors of the corporation, acting as a Board of Directors, to take all action necessary and appropriate pursuant to the provisions of Article 4 of Part 2 of the General Corporation Act of the State of Indiana, to approve and cause to be submitted to the shareholders of Dodge Manufacturing Corporation such agreement of merger.

Said letter of June 17, 1967, further stated that relator is a substantial shareholder of Dodge, and that relator desires to communicate with the other shareholders of Dodge concerning the proposed merger of Dodge and Reliance Electric and Engineering Company and concerning relator's merger proposal of June 15, 1967. The letter then requested that relator be permitted the immediate right to inspect, examine and copy the current list of Dodge shareholders, pursuant to Section 11 of the Indiana General Corporation Law [Burns, Indiana Stats., § 25-210]. A copy of the letter of June 17, 1967, is attached to and made a part of this complaint as Exhibit C.

10. Information relative to the formal plan of merger proposed by Emerson is material and relevant to a decision on the part of the shareholders of Dodge to accept

or reject the recommendation of the Dodge Board of Directors that the Reliance plan of merger be adopted. Only by having this information available to them can the shareholders make an intelligent comparison of the two offers, and act in their own best interests. Failure of Dodge to communicate this information to its shareholders renders the Dodge communications to its shareholders incomplete and misleading. Emerson desires to make this information available immediately to all other shareholders.

11. Section 11 of the Indiana General Corporation Law provides:

> "Each corporation shall keep correct and complete books of account and minutes of the proceedings of its shareholders and directors; and shall keep at its principal office an original or a duplicate stock register or transfer book, or, in case such corporation employs a stock registrar or transfer agent in this or any other state, a complete and accurate shareholders' list giving the names and addresses of all shareholders and the number and classes of shares held by each. All such books, records and lists of a corporation shall be open to inspection and examination during the usual business hours for all proper purposes by every shareholder of the corporation, or his duly authorized agent or attorney." Burns, Ind. Stats., § 25-210.

12. On June 23, 1967, relator received a letter from Dodge, signed by defendant MacLean, dated June 22, 1967, denying relator's request as contained in its letter of June 17, 1967. A copy of said letter of June 22, 1967, is attached to and made a part of this complaint as Exhibit D.

13. The letter of June 22, 1967 (Exhibit D) states in part:

> "This is to advise you that Dodge intends to solicit proxies from all holders of record of its common shares. There are at present approximately 3,000

such holders. Dodge further intends to make a solicitation of the beneficial owners of its common shares held in names of brokerage firms, banks, etc. Dodge does not know the number of such beneficial owners, but approximately 135 of the total number of record holders of Dodge common shares are brokerage firms, banks, etc., which may be holding such shares for one or more beneficial owners. Dodge estimates that such beneficial owners may aggregate 1,000 persons."

14. The only reasons set forth by defendants in their letter of June 22, 1967 (Exhibit D) for their refusal to give relator access to the current Dodge shareholder list are:

(a) that Dodge will undertake to mail a proxy statement and form of proxy for relator prior to the proposed August 22, 1967 meeting pursuant to the requirements of Rule 14a-7 promulgated by the Securities and Exchange Commission; and

(b) that since the record date for the proposed August 22, 1967 meeting is July 14, and since only shareholders of record on July 14 will be eligible to vote at the August 22 meeting "the present list of shareholders has no materiality to proxy solicitation for such meeting."

Neither of these purported reasons constitutes good cause for denying relator's right to inspect, examine and copy Dodge's current shareholder list.

15. Relator intends to solicit proxies for the special meeting of Dodge shareholders scheduled to be held August 22, 1967, in opposition to the approval of the proposed merger between Dodge and Reliance Electric and Engineering Company, and in favor of the proposal set forth in paragraph 9 hereof, calling upon the Dodge Board of Directors to permit the Dodge shareholders to express their approval or disapproval of relator's proposal of merger with Dodge. Relator believes that its merger proposal is more favorable to Dodge and to the

shareholders of Dodge than the proposed plan of merger between Dodge and Reliance Electric and Engineering Company, and relator believes that rejection of the proposal for merger with Reliance and acceptance of relator's proposal would be in the best interests of Dodge and of Dodge shareholders, including relator. For these reasons, relator desires to communicate with the other shareholders of Dodge regarding the proposal for merger with Reliance and regarding its proposed resolution referred to in paragraph 9 of this complaint. For these purposes relator seeks to inspect, examine and copy the current list of Dodge shareholders, pursuant to Section 11 of the Indiana General Corporation Law.

16. Under Section 11 of the Indiana General Corporation law, relator has a right to inspect, examine and copy the current list of Dodge shareholders, and defendants are required by law to permit relator immediate access to such list of shareholders for those purposes. Defendants' unlawful and wrongful refusal to permit relator to inspect, examine and copy said shareholders list is without warrant of law and is arbitrary and capricious.

17. The purported reasons given in defendants' June 22, 1967 letter (Exhibit D) for said refusal are insufficient in law. Relator's right to access to the shareholders' list under Section 11 of the Indiana General Corporation Law is not affected by the requirement of federal law that Dodge mail relator's proxy statement to the Dodge shareholders. Further, relator cannot effectively communicate with other Dodge shareholders prior to the August 22, 1967 meeting if relator is required to wait upon the preparation in late July of a list of Dodge shareholders as of July 14, 1967. Relator's right to access to said list under Section 11 of the Indiana General Corporation Law is not limited to the list as of the record date for a particular shareholders' meeting.

18. Relator is entitled to a Mandate compelling defendants to produce forthwith the current list of record owners of shares of Dodge common stock, with the names and addresses and number of shares owned by each share-

holder for inspection, examination and copying by relator, at a time and place to be fixed by the Court.

19. Relator has suffered irreparable damage by reason of defendants' refusal to grant relator access as aforesaid to said shareholder list and relator will suffer further irreparable damage unless it is promptly granted access to such list. The individual defendants and the Dodge Board of Directors have approved the proposal for a merger of Dodge and Reliance, and intend to urge the shareholders of Dodge to accept said proposal at the special meeting called for August 22, 1967, and to solicit from said shareholders proxies to be voted in favor of the Reliance merger proposal. Relator believes that it is in the best interests of Dodge and of the shareholders of Dodge, including relator, that the Reliance merger proposal be rejected, and that relator's merger proposal be adopted. Relator cannot effectively communicate its views with respect to these merger proposals to other Dodge shareholders or effectively attempt to convince a majority of Dodge shareholders to reject the Reliance merger proposal and adopt relator's merger proposal, unless relator is granted immediate access to the current list of Dodge shareholders and is permitted to inspect, examine and copy said list.

20. Unless this Court's Mandate is issued immediately, relator will not have adequate time and opportunity to communicate with other stockholders prior to August 22, 1967, the date defendants plan to hold the aforesaid special meeting. An emergency therefore exists that requires immediate relief to protect relator's rights. In the interest of justice, therefore, the time within which defendants should answer the complaint herein should be fixed at two days after service of summons upon them, and the hearing should be held immediately.

Wherefore, relator Emerson Electric Co. prays:

A. That this cause be heard and determined as an emergency matter at the earliest possible time, that the summons require the defendants to appear and answer the complaint two days after the service of summons upon

them, and that the cause be set for hearing immediately thereafter.

B. That a Mandate be issued, directed to defendants Dodge Manufacturing Corporation, J. Allan MacLean and Karl D. Jahnke, commanding them and each of them to produce forthwith a current list of the shareholders of record of Dodge Manufacturing Corporation, showing the names and addresses of and the number of shares owned by each shareholder, to permit relator to examine, inspect and copy said information at a time and place to be fixed by the Court;

C. That defendants be enjoined from holding the scheduled Dodge shareholders' meeting or any other Dodge shareholders' meeting and soliciting proxies for any such meeting until such names and addresses are furnished and relator is given adequate time and opportunity to communicate with other shareholders and beneficial owners;

D. That relator have such other and further relief in the premises as the Court shall deem just and proper.

Emerson Electric Co.

By _____
William F. McInerny

_____
Albert E. Jenner, Jr.

_____
Samuel W. Block

_____
Wesley G. Hall
Its Attorneys

Chapleau, Roper, McInerny & Farabaugh
301-09 St. Joseph Bank Building
South Bend, Indiana 46601
Tel. 233-5773

Raymond, Mayer, Jenner & Block
135 South LaSalle Street
Chicago, Illinois 60603
Tel. RA-6-0220

Cause No. D 3655

IN THE ST. JOSEPH SUPERIOR COURT
DIVISION

State of Indiana, St. Joseph County, ss.

State of Indiana on the Relation of Emerson Electric Co., a Missouri Corporation,

Plaintiff,

v.

Dodge Manufacturing Corporation, an Indiana Corporation, J. Allan MacLean and Karl D. Jahnke,

Defendants.

ORDER

(Filed June 30, 1967)

This cause having come on to be heard pursuant to complaint for writ of mandate, and the parties having appeared in open court by their counsel, the plaintiff having advised the court that it intends to use the current and supplemental lists of the shareholders of record of Dodge Manufacturing Corporation which it seeks to obtain by this action solely in connection with the solicitation of proxies and the mailing of materials relating thereto in compliance with applicable rules and regulations of the Securities and Exchange Commission, and the parties having stipulated that the defendants shall furnish a current list of the shareholders of record of Dodge Manufacturing Corporation and supplementary information as to changes in the list as they occur from day to day;

It Is Ordered That, pursuant to agreement of the parties, defendants shall forthwith cause Harris Trust and Savings Bank, Chicago, Illinois, the transfer agent for Dodge Manufacturing Corporation, to prepare at relator's expense a current list of the shareholders of record of

Dodge Manufacturing Corporation (and such number of copies as relator shall desire) showing the names and addresses and the number of shares owned by each shareholder, and to deliver the same to relator Emerson Electric Co., on or before the close of business on July 5, 1967, and that defendants shall thereafter furnish to relator at relator's expense a like number of copies of supplementary information as to changes in the shareholders of record of Dodge Manufacturing Corporation as those changes occur from day to day.

Dated June 30, 1967.

Enter:

Norman Kopue
Judge

PLAINTIFF'S EXHIBIT 21.

(Letterhead of Emerson Electric Co.,
St. Louis, Mo. 63136)

June 29, 1967

Mr. J. Allan MacLean, President
Dodge Manufacturing Corporation
Mishawaka, Indiana

and

To All Members of the Board of Directors
of Dodge Manufacturing Corporation

Gentlemen:

This supplements my letter to you of June 21, 1967 which transmitted to you a proposed Plan and Joint Agreement of Merger (the Plan) between Emerson Electric Co. (Emerson) and the Dodge Manufacturing Corporation (Dodge) in printer's proof form. Since Emerson has received no reply to that letter, it has proceeded to

have the Plan put into final form, printed and signed on behalf of Emerson. Blanks which existed in the proof form have been completed and certain additional changes have been made in the final printing. We do not believe you will find these to constitute any substantial departure from the basic terms of the Plan as previously forwarded.

A copy of the Plan, in final form and signed by Emerson, is transmitted herewith by Emerson as Emerson's merger proposal to Dodge. This Plan has been duly approved by the Directors of Emerson and will be submitted for approval by its stockholders at a Special Meeting of such stockholders called to be held for such purpose on August 18, 1967. If you believe any amendment to the Plan in its present form is necessary prior to the approval of the Plan by the Board of Directors of Dodge or submission to the stockholders of Dodge, Emerson stands ready to discuss with you any reasonable proposed amendments. You will note that, pursuant to Article VI of the Plan, amendments may be made to the Plan by agreement between Emerson and Dodge.

This Plan in final form is submitted to you on the same condition stated in my letter to you of June 21, 1967, as follows:

> "Furthermore, in the event that the Board of Directors of Dodge, or any officer of Dodge acting pursuant to due authorization of its Board, shall at any time duly approve any amendment, modification or change in the proposed agreement of merger with Reliance Electric and Engineering Company (Reliance) which has been reported in the public press, or any new agreement of merger with Reliance, or any agreement for the sale of substantially all of its assets to Reliance, or any agreement of merger with, or agreement for the sale of substantially all of its assets to, any other company, the effect of which, in the opinion of Emerson, is to offer to the shareholders of Dodge a proposal which is more favorable to such shareholders than the one of Reliance which has heretofore been reported in the public press, then and in

any such event Emerson reserves the right and option, but shall not be obligated, to withdraw this offer, at any time thereafter, by written notice to Dodge of its intention so to do, sent by registered mail."

Yours very truly,
W. R. Persons
Chairman of the Board
Emerson Electric Co.

PLAINTIFF'S EXHIBIT 23.

(Letterhead of Dodge Manufacturing Corporation, Mishawaka, Indiana)

June 30, 1967

Mr. W. R. Persons
Chairman of the Board
Emerson Electric Co.
8100 Florissant Avenue
St. Louis, Missouri 63136

Dear Mr. Persons:

This will acknowledge receipt of your letters of June 27 and June 29, transmitting the final printing of a proposed Agreement of Merger, the printer's proof of which was received with your letter of June 21.

As has been publicly announced, our Board of Directors has approved, and, at their instructions, I have signed a formal merger agreement with Reliance Electric and Engineering Company, which agreement is scheduled to be submitted to our shareholders on August 22. The Indiana law requires that any merger agreement must first be acted upon by the board of directors before being submitted to the shareholders. Inasmuch as our Board has approved an agreement of merger with Reliance, it is not in position at this time to act upon the proposed agreement which you have sent to us.

Our Board of Directors does have this entire matter under further consideration.

Very truly yours,
/s/ J. A. MacLean
J. A. MacLean
President

JAM:m

PLAINTIFF'S EXHIBIT 24.

Emerson Electric Co.
8100 Florissant Avenue
St. Louis, Mo. 63136

July 14, 1967

Important Message to Shareholders of
Dodge Manufacturing Corporation

The management of Dodge Manufacturing Corporation has just sent (or "will shortly send") you a Notice of Special Meeting of Dodge shareholders to be held August 22, 1967 to vote on a proposed merger of Dodge into Reliance Electric Co. We oppose that merger and will urge Dodge shareholders to vote against it.

1. We do not think it is a good merger for Dodge. We own 151,982 shares (approximately 13.2%) of Dodge's common stock and we are its largest single shareholder. We will vote all our shares against the Reliance deal.

2. Emerson Electric Co. has made its own merger offer to the Board of Directors of Dodge which we believe is far more attractive and advantageous to Dodge shareholders than the Reliance deal. Since under Indiana law mergers must be initiated by the Directors of a Company, we will ask the Dodge share-

holders to adopt a resolution urging the Dodge Board of Directors to act favorably on the Emerson merger and to bring it to the shareholders for a vote.

Material setting forth in detail the reasons for our opposition to the Reliance merger and explaining the Emerson proposal is under preparation, and will be mailed to you shortly.

In the meantime, we ask only one thing of you—withhold your judgment and your vote. The August 22 meeting is a long way off and you will have plenty of time to make up your mind after you have all of the facts. Your right to vote will not be affected since you may vote by mail at any time prior to the meeting on August 22, or in person at the meeting.

/s/ W. R. Persons
W. R. Persons
Chairman of the Board

PLAINTIFF'S EXHIBIT 25.

Civil No. 4050.

UNITED STATES DISTRICT COURT

for the Northern District of Indiana
South Bend Division

Emerson Electric Co., a Missouri Corporation,
Plaintiff,

v.

Dodge Manufacturing Corporation, an Indiana Corporation, J. Allan MacLean, Karl Jahnke, Carl W. Petersen, Fred J. Ebeling, Marquard J. Anderson, Walter J. Buettner, Sidney B. Hainsworth, Charles E. Heitman, Jr., Harry D. Orr, Jr., and John R. Wood, Jr.,
Defendants.

COMPLAINT

* * * * *

Wherefore, Plaintiff Emerson Electric Co. prays for judgment against the defendants:

A. Preliminarily, pending the determination of this action, and permanently thereafter, restraining and enjoining the defendants, their officers, directors, managers, agents, servants and employees and all persons acting in concert with them:

(1) from calling or holding a special meeting of stockholders of Dodge Manufacturing Corporation for or on August 22, 1967 or for or on any other date to consider any proposal to merge or consolidate Dodge with Reliance Electric Engineering Company or from sending or causing to be sent to any Dodge shareholder any proxy statement or other proxy-soliciting material, or from otherwise soliciting proxies from Dodge shareholders or vot-

ing directly or indirectly any proxies which defendants now hold or hereafter acquire for such proposals until defendants

(a) correct the false and misleading statements referred to in the complaint;

(b) give plaintiff access to all proxy-soliciting materials which defendants propose to send to any Dodge shareholder and correct any false or misleading statements which may be found to exist in such proxy-soliciting materials;

(c) furnish Dodge shareholders with complete and accurate information with respect to plaintiff's merger proposal of June 15, 1967;

(d) accord plaintiff sufficient information and time effectively to communicate with other Dodge shareholders and owners of beneficial interest in Dodge stock and to solicit their proxies with respect to the matters to be brought before such meeting.

(2) From mailing any proxy solicitations or other communications to Dodge stockholders until plaintiff has had an opportunity to prepare its proxy solicitation material, to the end that proxy solicitations and any other mailings to stockholders by plaintiff and defendants prior to any such special meeting be made simultaneously.

B. Requiring that defendants correct the false and misleading statements described in this complaint;

C. Requiring that defendants furnish Dodge shareholders with complete and accurate information with respect to plaintiff's merger proposal of June 15, 1967;

D. Requiring defendants to consider plaintiff's merger proposal on its merits and thereafter requir-

ing them either to approve plaintiff's said merger proposal and submit that proposal to Dodge shareholders for adoption, or if defendants do not approve that proposal, to include plaintiff's Resolution, set forth in Paragraph 24, of this complaint, in their proxy-solicitation materials mailed to Dodge shareholders in connection with any meeting at which the Reliance offer is considered and to submit that Resolution to be voted on at said meeting; and

E. Granting plaintiff such other and further relief as justice requires.

William F. McInerny
Albert E. Jenner, Jr.
Samuel W. Block
Philip W. Tone
Wesley G. Hall
By /s/ William F. McInerny
/s/ Albert E. Jenner, Jr.
Attorneys for Plaintiff

Of Counsel:

Chapleau, Roper, McInerny
& Farabaugh
301-09 St. Joseph Bank Building
South Bend, Indiana 46601
233-5173

Raymond, Mayer, Jenner & Block
Suite 3300
135 S. La Salle Street
Chicago, Illinois
RAndolph 6-0220

PLAINTIFF'S EXHIBIT 26.

Dodge Manufacturing Corporation
Mishawaka, Indiana

July 24, 1967

Dear Fellow Shareholder:

A Special Meeting of Shareholders has been called for August 22, 1967, to consider and approve the merger of Dodge Manufacturing Corporation into The Reliance Electric and Engineering Company. Your Board of Directors on June 8, 1967 advised you of the terms of the Agreement of Merger.

It is important for you to know that this Agreement has now been amended to provide additional advantages to you as a shareholder of Dodge.

These additional advantages are as follows:

- Dividend Increased—the dividend on the new Reliance convertible preferred stock has been increased to $3.00 from $2.50 per share.
- Non-callable Period Extended—the new Reliance convertible preferred stock non-callable period has been increased to six (6) from five (5) years.
- Redemption Price Increased—the redemption and voluntary liquidation price on the new Reliance convertible preferred stock has been increased to $90 per share from $70 per share.

EXCHANGE TERMS: You will receive for each share of Dodge common stock one share of Reliance convertible preferred stock which will have a fixed cumulative annual dividend rate of $3.00 per share, payable 75c quarterly. In addition the new preferred stock will be convertible into 1.4 shares of Reliance common stock at any time and on a tax-free basis. The new Reliance convertible preferred stock will be non-callable for six years—until January 1, 1974. After that time it may be called but only at a price of $90 per share. Your Reliance convertible preferred stock will have full voting rights and will also have the power, voting as a class, to prevent the creation of any new Reliance preferred stock

ranking equal with or prior to this new convertible preferred stock. Application will be made for the listing of the new convertible preferred stock on the New York Stock Exchange.

TAX-FREE EXCHANGE: In the opinion of counsel, the exchange of your Dodge shares for the new Reliance convertible preferred will result in a tax-free exchange. Application for a tax ruling to this effect has been made and your Board of Directors intends to terminate the Agreement of Merger unless a favorable ruling is obtained.

PROSPECTS OF THE COMBINED COMPANIES: Reliance products are electrical, electronic and mechanical systems and equipment for driving, measuring, and controlling machinery and processes. These product lines will complement the Dodge lines. Reliance sells throughout the United States and has investments in technically qualified organizations in Switzerland, Japan, Mexico and Australia. Your directors and management believe that the combined management, technology and marketing capabilities of the merged companies will provide greater growth opportunities.

The Board of Directors and management have studied and considered carefully the new terms of the merger agreement and believe it to be the most advantageous offer to you as a shareholder. Therefore, your Board of Directors urges you, in your own best interest, to vote FOR the proposed merger with The Reliance Electric and Engineering Company.

A formal notice of meeting and proxy statement are enclosed, which we ask you to read carefully.

Since the approval of this proposal requires the consent of the majority of the outstanding shares, it is important that your shares be represented at this meeting. Failure to vote is the same as voting against.

We urge you to sign, date and mail the enclosed proxy promptly.

Sincerely,

/s/ J. A. MacLean
President

PLAINTIFF'S EXHIBIT 27.

Emerson Electric Co.
8100 Florissant Avenue
St. Louis, Mo. 63136

July 31, 1967

Dear Dodge Shareholder:

The Directors of Dodge are asking you, in effect, to sell your investment in Dodge for less than the best price available.

Two merger proposals are presently available to your Board of Directors. I believe the enclosed material demonstrates that if Dodge is merged with Emerson Electric Co., instead of with Reliance, you the Dodge shareholder will receive securities worth far more than those you would receive in the merger with Reliance. Further, our company is a substantially larger, more diversified company than Reliance, with a record of superior growth in net earnings and dividends.

The proposals provide that you exchange each share of your Dodge Common Stock for either one share of Reliance Convertible Preferred or one share of Emerson Convertible Preferred Stock. The value of these two securities must be compared.

	Emerson	Reliance
Annual Preferred Dividend Rate	$ 2.76	$ 3.00
Converted Market Value on July 28, 1967	$74.25	$61.25

In other words, your Directors are asking you to accept a merger proposal which is worth approximately $15,000,000 less at today's market than is the merger proposal Emerson offers you.

If you own 100 shares of Dodge Common Stock, based on closing common stock market prices on July 28, the converted market value of the Reliance offer would be $6,125 and the dividend you would receive would be $300 per year. The Emerson offer would result in a converted

market value of $7,425 and you would receive a dividend of $276 per year.

Do you realize that it would take over fifty years for the $24 of greater annual dividend from the Reliance offer to offset the $1,300 of greater market value of the Emerson offer.

Further, if the Emerson securities are sold at a later date, the added market value of the Emerson stock would be subject to capital gains tax while the $24 per year added dividend would be subject to ordinary income tax rates each year.

Just as important as an analysis of current values of the offers is an appraisal of the growth records of the two companies which back these offers:

* * * * *

[figures omitted]

Net sales, net earnings and earnings per share are shown as reported in the annual reports of Emerson and Reliance and without including pooled companies for years prior to their affiliation. Net sales for the companies acquired by Emerson in its successful program of selective diversification in this period were, in total, $138,885,000 computed as of the last full year of their respective operations prior to acquisition.

Based on these comparisons, do you feel that 24 cents per share of additional annual dividend offsets the $13 per share difference in converted market value at today's market and the difference in the established performances of Reliance and Emerson?

The exchange of the assets and business of your company is perhaps the most important step you as a shareholder can take. I urge you to give careful consideration to the enclosed material. Show it to your broker and ask his advice. The important thing is that ultimately you receive the most value in exchange for your investment in Dodge.

You as the Dodge Shareholder, not the Directors, control this important decision—and the resultant value you

will receive for your investment in Dodge. I urge you to vote AGAINST the Reliance merger and FOR the Emerson shareholder resolution.

Sincerely,

/s/ W. R. Persons
Chairman of the Board

Important Message to Shareholders of
Dodge Manufacturing Corporation

July 31, 1967

To the Shareholders of
Dodge Manufacturing Corporation:

Emerson Electric Co. (Emerson), owner of 152,282 common shares (13.2%) of Dodge Manufacturing Corporation (Dodge), is the largest single Dodge shareholder. We have previously asked you to withhold your vote on the proposed merger between Dodge and The Reliance Electric and Engineering Company (Reliance) recommended by the Dodge Board of Directors, until you heard from us.

The Dodge Directors mailed proxy material to you on July 24, 1967 submitting the Reliance deal. We do not think the Reliance merger is good for the Dodge shareholders. Emerson has made a merger proposal to the Dodge Directors which we believe is far more attractive and advantageous to Dodge shareholders than the Reliance deal. As set forth in the enclosed letter from W. R. Persons, Chairman of the Board of Emerson, the Dodge Directors are asking you to accept a proposal from Reliance which is worth approximately $15,000,000 less than Emerson's proposal at today's market. We think this matter is of such importance to you that you will want to read and consider the information set forth below. *Even though you may have signed and sent in the management proxy which solicited your vote in favor of the Reliance merger, you may sign and date the enclosed blue proxy which will revoke your prior vote and express your desire to be given the opportunity to choose between the two merger proposals.*

We solicit your proxy "AGAINST" the proposal which the Dodge Directors presented to you for a merger between Reliance and Dodge and "FOR" an Emerson shareholder resolution which evidences your desire to have an opportunity to consider the pending Emerson merger proposal, and calls upon the Dodge Directors to submit the Emerson proposal to you, as a shareholder, for your vote.

The Dodge Directors have not seen fit to provide you with the opportunity to choose between the two merger proposals available to your Company. Only by voting "FOR" the Emerson shareholder resolution and rejecting the Reliance merger proposal will you have the opportunity to express YOUR desire that this choice be given to you.

What Does the Emerson Proposal Offer?

Emerson on June 15, 1967, offered to enter into a merger agreement with Dodge, providing for a tax-free merger of Dodge into Emerson. The agreement has been executed by Emerson, approved by its Board of Directors, and formally presented to Dodge.

Under this agreement, each share of Dodge Common Stock would be exchanged for one share of a new Cumulative Convertible Preferred Stock, Series B, of Emerson. This Emerson Preferred would have an annual dividend rate of $2.76 per share, payable quarterly. It would be convertible at any time into .9 shares of Emerson Common Stock, and would be non-callable for six years. After six years, it would be callable at $86 per share, the call price declining at the rate of $1.00 each year for six years. The call price never reduces below $80. The Emerson Preferred will have full voting rights and will have the power, voting as a class, to prevent the creation of any other class of preferred stock ranking equal with or prior to the Emerson Preferred.

In order to avoid inequity to former Dodge shareholders who tendered stock to Emerson under its earlier tender offer, Emerson will offer to each such Dodge shareholder the right to purchase, after consummation of the Dodge-

Emerson merger and upon repayment to Emerson of the net price paid for his tendered shares, such number of Emerson Preferred shares as the Dodge shareholder would have been entitled to receive in the merger if he had not tendered his shares to Emerson.

In order for you to be fully informed of the details of Emerson's merger proposal, we are enclosing, as "Supplemental Information for Dodge Shareholders," a copy of the proxy statement we sent to our own shareholders, in soliciting their proxies for a special shareholders meeting on August 18, 1967, called to approve the Emerson-Dodge merger. Our offer is a firm offer, subject to the same type of shareholder approval required for the Reliance offer.

Reliance Changes Its Deal

The Dodge Directors announced on May 25, 1967, that they had signed a merger agreement with Reliance. This agreement provided that each share of Dodge Common Stock would be exchanged for a new Reliance Preferred Stock, having an annual dividend rate of $2.50 per share, into 1.4 shares of Reliance Common Stock, non-callable convertible into 1.4 shares of Reliance Common Stock, non-callable for five years, and thereafter callable at $70.

On July 14, 1967, Emerson wrote to you stating that it believed Emerson's offer to be far more attractive and advantageous than the proposed deal with Reliance. Emerson stated, "We do not think it is a good merger for Dodge."

After our letter, Reliance and the Dodge directors made a *new* deal. Under this proposal, which will be voted on at the August 22 meeting, each share of Dodge Common would be exchanged for a new Reliance Preferred having an annual dividend rate of $3 per share, convertible into 1.4 shares of Reliance Common, non-callable for six years and thereafter callable at $90. Dodge management has recommended this changed proposal as providing additional advantages. Are the so-called advantages of any real significance to you?

Call Price. The call price of the Reliance Preferred has been increased from $70 to $90. In point of fact, if Reliance were to call this Preferred Stock the day after it was issued, it would require a disbursement of over $101,000,000 or *$27,000,000 more than the total combined shareholders' equity on a pro forma basis* of Reliance and Dodge as of April 30, 1967. Reliance has no obligation to call this Preferred Stock at $90, and you may well question whether this increase of $20 in the call price changes in any way the real value of this security to you.

Redemption Period. Reliance has increased the period during which its Preferred Stock will be non-callable from five to six years. This is a patent attempt to match one feature of the superior Emerson offer.

Dividend. Finally, *after* Emerson's offer, Reliance has changed the dividend on its proposed Preferred Stock to increase it by 24¢ per year per share above the Emerson dividend rate. This 2¢ per month change in no way bridges the gap of $15,000,000 in present market value between the two proposals.

These changes in the Reliance deal appear to be an effort on the part of the Dodge and Reliance directors to put together a deal which might seem to approach the values offered to you by Emerson. The value of the security offered by Emerson, measured upon either an historic or a current basis, greatly exceeds the value of the Reliance offer.*

The Reliance Preferred Stock has other features which the Dodge Directors have not seen fit to stress. In a footnote on page 9 of the management proxy statement, it is noted that the Reliance Preferred Stock will receive

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* Market prices of Emerson's Common Stock are set forth on page 7 of the enclosed Supplemental Information to Dodge Shareholders. Market prices of Reliance are set forth on page 14 of the proxy material the Dodge Directors mailed to you, which omitted any reference to Emerson's market prices.

a preference in case of the involuntary liquidation of Reliance of $20 per share. The $20 liquidation value is $70 less than the call price which Reliance has placed on its Preferred Stock. Emerson's Preferred Stock has a preference on liquidation of $80 per share or *four times* that of Reliance. This liquidation value is the ultimate measure of the extent to which the assets of the company are pledged behind the security of the stock, a significant indicator of the safety of the preferred stock.

Emerson's Offer is a Firm Commitment

Dodge management has persistently attempted to create the impression that the Dodge-Reliance deal is a firm agreement and is the only one which you may consider. They have even gone so far as to indicate that if any resolution relating to Emerson's merger proposal is presented to you at the meeting, they intend to rule it out of order.

You may well ask why the Dodge Directors are so apprehensive of the outcome of a free choice by you that they refuse in advance to entertain any expression of that choice at an open meeting. We ask you if this is a fair way of determining what you as a shareholder want.

You should carefully note, moreover, that *Reliance can walk away from the Dodge-Reliance merger even after shareholder approval if, "in their reasonable judgment" the merger appears inadvisable* because of the number of shareholders who dissent and demand cash for their shares. This "out" is not related to any fixed standard, but is purely discretionary.

Also, under Indiana law, Dodge management can refuse to approve consummation of the merger even after you vote, for whatever reason they deem sufficient. As stated in the Dodge proxy material, this "reapproval cannot take place until 30 days after" [the shareholders vote]. Emerson's proposal is a firm one and will be open to you after you reject the Dodge-Reliance deal.

We will vote our shares of Dodge stock against the Reliance proposal and in favor of the Emerson shareholder

resolution. We are going to watch the situation carefully and make such changes in our stock holdings and in our proposal as we deem desirable. *We pledge, however, that the merger proposal which Emerson has made to the Dodge Directors will be available after you reject the Reliance proposal on August 22nd.*

Dodge Has No Legitimate Grounds for Questioning the Tax-Free Nature of Emerson's Offer.

Dodge management seeks to cast doubt upon the tax-free nature of the Emerson proposal. Emerson has received unequivocal advice from experienced tax counsel that its merger offer to you qualifies as a tax-free transaction. Against this unqualified advice, Dodge offers a suggestion of its lawyers that the tax-free nature of the Emerson proposal "may be" in doubt. The tax-free nature of the Emerson proposal is no more "in doubt" than that of the Reliance proposal. The Reliance proposal must be presented to the Internal Revenue Service for a ruling that the merger and the exchanges of stock thereunder will be tax-free. That merger would not become effective unless such a ruling is obtained.

Emerson presented its merger proposal to the Dodge Directors with no conditions at all. From the very first, on June 15, 1967, it has been referred to as "a tax-free merger" of Dodge into Emerson. When the Dodge Directors turned down the Emerson merger proposal, they did not say they had "doubt" of its tax-free nature. They did not offer to accept it subject to a favorable tax ruling. They said only, that, having "approved an agreement of merger with Reliance," the Dodge Board "is not in a position *at this time* to act upon the proposed agreement," which Emerson had sent Dodge.

Why Is the Emerson Offer More Attractive Than the Reliance Offer?

If the Emerson merger had been consummated July 28, the dollar value of each preferred share received from Emerson in the merger and immediately converted into

an Emerson common share would have been $74.25. On that same day, the dollar value of a Reliance preferred share received on the merger that the directors recommend to you similarly converted into Reliance common shares would have been $61.25.

In other words, the dollar value of the Emerson preferred shares offered in the merger would have been 21% higher than the dollar value of the Reliance preferred shares which your directors want you to accept. What does this mean in dollars? It means that the Dodge Directors want you to accept a merger proposal *worth today* $13 per share less than the Emerson proposal!

Why Is the Emerson Merger Better for You As a Dodge Shareholder?

We suggest that you consider carefully the history of the growth of Emerson, and the growth in the value of its stock, in determining what action you will take. The following data, we believe, will demonstrate to you the desirability of sharing in that growth.

1. Emerson Provides Growth Strength Through Selective Diversification.

Emerson is one of the outstanding growth companies in the USA today, as evidenced by its performance record:

* * * * *

[Figures omitted]

The policy of Emerson with all merger partners is to continue to operate each merged company as an autonomous Division. If the merger is consummated with Dodge, Emerson intends to maintain Dodge's principal operations in their Mishawaka-South Bend location and to continue substantially Dodge's present policies, practices and employments.

2. Emerson's Shareholders' Equity Provides Greater Security for a Preferred Shareholder.

The shareholders' equity in the combined company following a merger [pro forma net worth] is important to the shareholders of the absorbed company. It is *another* measure of strength available in case of economic adversity. In this regard, the following comparison is important:

Pro Forma Shareholders Equity*

Reliance-Dodge	Emerson-Dodge
$74,567,000	$177,336,000

There is 2.3 times more shareholders equity in an Emerson Dodge merger!

3. Emerson Earnings and Dividends Have Grown Steadily.

Emerson is a substantially larger company than Reliance, is engaged in diversified businesses, and has demonstrated an earnings and dividend record consistently superior to that of Reliance. The strength of Emerson's selective diversification avoids the cyclical declines of the more restricted Reliance markets as set forth graphically herein.

Emerson's net earnings per common share have increased steadily and cash dividends on common stock have kept pace.

Increase Per Common Share on a Percentage Basis Over 1957

* * * * *

[Graphs omitted]

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* As of April 30, 1967. The financial information concerning Dodge herein has been obtained from reports filed with the Securities and Exchange Commission and other materials published by Dodge. Other information relating to Dodge and included herein has been obtained from public documents and from reports published by Dodge. The information with respect to Reliance has been obtained from similar reports, public documents and other material.

These graphs show the percentage of increase in each year since 1957 in earnings and dividends paid per common share.

Net earnings are computed from the annual reports of the respective companies and without including pooled companies for years prior to their affiliation. They, therefore, vary from net earnings reported on a pooled basis in the proxy material of Emerson included herewith as "Supplementary Information for Dodge Shareholders."

Why Should You Vote "Against" the Reliance Merger and "For" the Emerson Shareholder Resolution?

We feel you should be given the right to decide whether the Emerson merger or the Reliance merger offers you the greater economic benefit. However, the Dodge management and directors have refused to give you an opportunity to vote on the Emerson proposal at your August 22d meeting. We asked for a shareholders list in order to write to you. Our request was turned down and not until we instituted law suit to obtain such a list were we finally given it.

To provide you with an opportunity to express *your* desire to choose which merger *you* want, we intend to submit at the special meeting of Dodge shareholders which has been called for August 22, 1967, the following resolution:

> Resolved, that a majority of the shareholders of Dodge Manufacturing Corporation desire the opportunity to consider the agreement of merger proposed to be entered into between Emerson Electric Co. and Dodge Manufacturing Corporation, and hereby call upon the Directors of the corporation, acting as a Board of Directors, to take all action necessary and appropriate pursuant to the provisions of Article 4 of Part 2 of the General Corporation Act of the State of Indiana, to approve and cause to be submitted to the shareholders of Dodge Manufacturing Corporation such agreement of merger.

If you agree with our position that the Emerson proposal offers you greater economic advantages than the Reliance proposal, or if you agree that you should be given an opportunity to exercise a choice, you are respectfully urged to date, sign and return the accompanying proxy, voting by marking the box "AGAINST ☒" the Reliance merger proposal and "FOR ☒" the Emerson shareholder's resolution calling upon the Dodge Directors to submit the pending Emerson merger proposal to you, as a shareholder, for your vote.

The Emerson Dodge merger is a desirable one.

Dodge cannot say that Emerson is a less "well-suited" merger partner for Dodge "as to products, markets, personnel and objectives." The Dodge Directors tell you that in 1966 Emerson and Dodge "discussed various proposals by which Emerson might acquire the business and assets of Dodge in exchange for stock." *The Dodge Directors even made a counter-proposal of merger.* They could not have had any concern about the future growth of Emerson, which in the past has far outstripped the growth of Reliance.

The Dodge Directors have given three reasons for recommending the Reliance proposal. The same reasons apply with greater force to the Emerson proposal:

> Immediate and substantial increase in dividend rate. So in Emerson's.
>
> Preferential right in earnings to assure dividend continuance. So in Emerson's.
>
> Option to convert to participate fully in future growth. So in Emerson's.

The real issue for *you* to decide is whether you want to "give careful consideration" (as the Dodge Directors say they did) to "many factors" including:

> Market prices—As of July 28, 1967, the Emerson offer provided a converted market price which is $13.00, or 21% above the Reliance offer for the Common Stock into which the Preferred could be converted.

Earnings and dividends—The earnings and dividends per share are set forth on the graphs above.

Emerson's earnings are 282% per share above their 1957 base, Reliance 29%.

We believe *you* should have a chance to "give careful consideration" to the many factors with these facts before you. You should not have to accept another's judgment on this, someone whose judgment may have been affected by promises *he* received.

On June 13, 1967, five days after the Dodge Board approved the Reliance merger proposal, they report that they entered into employment contracts with six of Dodge's officers, including J. Allen MacLean. These contracts "provide for the employment of the officers for one or two-year periods at their present base rates of compensation, with eligibility to participate in other compensation and benefit plans and arrangements available to executive employees generally." *These contracts are to be assumed by Reliance in the merger.* One may ask if these contracts were discussed in connection with the Reliance merger negotiations, and ask why in the midst of a fiscal year, the Directors felt it necessary to provide job security for Mr. MacLean and the other five officers.

The Dodge Directors have told you about the lawsuit which Emerson brought to obtain a court order assuring you of the choice which we feel you should have, and of an adverse ruling, which we are now appealing. Pending that appeal, *only your votes can assure that choice.* It is to be noted, however, that on July 24, 1967, after the institution of our lawsuit and the ruling which the Dodge Directors refer to, Mr. John R. Wood, Jr., one of your Directors, a member of the Dodge Executive Committee, and chief financial officer of a major United States corporation, resigned from the Dodge Board. The management of Dodge reports that Mr. Wood, who is an outside Director, resigned because of a disagreement with the Dodge management's handling of that lawsuit.

Information Required in Proxy Statement

Your attention is called to the fact that the cost of solicitation by Emerson will be borne by that corporation. Proxies will be solicited by mail and may also be solicited by officers, directors and regular employees of Emerson. In addition, Emerson has engaged Georgeson & Co. and Kissel-Blake, of New York, New York, to assist in the solicitation of proxies by personal interview, mail, telephone and telegraph. We will reimburse brokerage firms, bankers, trustees, nominees or other persons for their out-of-pocket expenses in forwarding proxy material to the beneficial owners of shares held in their respective names. Total expenditures for solicitations to date have been approximately $6,000 and total amount to be expended is estimated at $30,000.

Any shareholder giving the accompanying proxy has the right to revoke it and said revocation will be effective when notice of it is given to the Secretary of Dodge. It should be noted that a later dated proxy will revoke a previously executed proxy. All shares represented by the accompanying proxy, if properly executed, duly returned to Emerson and not revoked prior to the meeting will be voted in accordance with the specifications made in the proxy. If no instructions are given with respect to the matter voted upon, shares represented by this proxy will be voted against the merger of Dodge into Reliance and in favor of the Emerson shareholder resolution. Emerson knows of no matters to come before the meeting other than those specified above. However, if other business should properly come before the meeting, the persons voting your proxy will vote it in accordance with their best judgment. This proxy material has been prepared and the proxies designated at the direction of the Board of Directors of Emerson.

Emerson Electric Co.
W. R. Persons
Chairman of the Board

You are entitled to revoke any proxy given to Dodge management by signing the enclosed blue proxy and dating it later than any proxy given to Dodge management.

PLAINTIFF'S EXHIBIT 28.

Dodge Manufacturing Corporation
Mishawaka, Indiana

August 4, 1967

Dear Fellow Shareholder:

Your Board of Directors strongly supports the Reliance offer rather than the Emerson offer because it is better and more advantageous to you as a Dodge shareholder.

You should know that your Board arrived at this decision with the assistance of the investment banking firm of Dillon, Read & Co. Inc., 46 William Street, New York, N. Y., and after thoroughly evaluating the terms of both offers.

The important reasons underlying this decision are as follows:

1. Preferred Stock Dividends: The Reliance offer provides a $3.00 annual dividend versus $2.76 under the Emerson offer. This higher dividend not only gives you more yearly income but provides solid support against the possibility of substantially lower common stock prices affecting the market price of convertible preferred stocks.

2. Earnings Per Share: Under the Reliance offer Dodge earnings per share after conversion would increase to $3.70 per share from the $3.52 earned by Dodge in fiscal 1966. *Under the Emerson offer Dodge earnings of $3.52 would decrease to $2.77 per share after conversion or a decrease of 21%.*

In their letters of July 31st, Emerson did not tell you about this decrease in earnings per share of $.75,

or a loss in earnings to Dodge shareholders of over $800,000.

3. Future Prospects: Your Board of Directors and management believe that Reliance's earnings prospects and growth rate for the immediate future are better than Emerson's. You as a shareholder of Dodge are naturally interested in this future growth.

A realistic and sound basis for evaluation of recent performance can be made from a comparison of the latest five year record of both Reliance and Emerson in the following table:

* * * * *

[Figures omitted]

As you can see Reliance performance is superior in every category.

4. Book Value Per Share: Under the Reliance offer the book value of each Dodge share after conversion increases from the present $19.76 to $23.06, up 17%. *Under the Emerson offer the shareholder suffers a dilution in book value per share after conversion from $19.76 to $15.77, down 20%.*

Emerson in their July 31st letter, did not tell you about this loss in book value to Dodge shareholders of $4,600,000.

5. Call Price: The Reliance offer provides for a call price of $90.00 per share whereas the Emerson offer has an $86.00 call price. Furthermore, the Emerson call price is reduced $1.00 per year after the seventh year eventually to $80.00.

The call price is a valuable feature of the Reliance offer because it assures the shareholder that the $3.00 preferred dividend can not be taken away from the Dodge shareholder unless he is paid $90.00 per share, or exercises his right to convert into common shares.

6. Dividends on Conversion: Under the Reliance offer, after conversion, the underlying annual dividend rate is equal to $1.68 per Dodge common share.

Under the Emerson offer, after conversion, the corresponding dividend rate is only $1.51 per share or 10% lower.

7. Converted Value: On August 2, 1967 the Reliance offer had a converted market value of $65.98 and the Emerson offer had a converted market value of $78.64. However, this differential in converted value is subject to market fluctuations.

Your Board of Directors believes that present converted value difference is easily outweighed by the solid investment advantages of the Reliance offer.

Again, in their July 31st letter, Emerson did not tell you of the susceptibility of their offer to market fluctuations.

8. Tax Free Transaction: Your Board has been advised by counsel that no merger should be consummated unless a favorable tax-free ruling has been received from the Internal Revenue Service prior to the closing. Counsel is of the opinion that such a tax-free ruling will be received in the Reliance offer but has further stated that it is doubtful that a tax-free ruling could be obtained with respect to the Emerson offer.

Clearly, it is in the best interest of Dodge shareholders to accept the non-taxable Reliance offer.

Considering Reliance's excellent five year record, its future prospects and the non-taxable nature of the transaction your Board of Directors is of the opinion that a greater opportunity exists for Dodge shareholders by accepting the Reliance offer.

Your Board of Directors and management strongly recommend that you vote FOR the proposed Dodge-Reliance merger. *To be sure that your vote is counted in favor of this proposal, please sign, date and mail only the enclosed WHITE management proxy.*

Sincerely,

/s/ J. A. MacLean
President

PLAINTIFF'S EXHIBIT 29.

Emerson Electric Co.
8100 Florissant Avenue
St. Louis, Mo. 63136

August 4, 1967

Dear Dodge Shareholder:

Emerson Electric Company is the largest single Dodge shareholder. Emerson opposes the Reliance merger which the management of Dodge has submitted to the Dodge shareholders. We do not believe it is the best one available. Emerson has submitted its own merger proposal which we believe is far superior to the Reliance deal.

The Dodge directors have refused to consider the Emerson proposal and have put forth many legal obstacles to its consideration by the Dodge shareholders. In a recent letter to the Dodge shareholders, Dodge management attempted to cast doubt upon the tax-free nature of the Emerson proposal. THERE IS NO MORE DOUBT ABOUT THE TAX-FREE NATURE OF THE EMERSON PROPOSAL THAN THERE IS ABOUT THE RELIANCE PROPOSAL. At this point each stands only on the opinions of the counsel for the respective companies.

To clear up any doubt regarding the tax-free nature of Emerson's proposal, we have attached to this letter the opinions of the general counsel of Emerson and of its special counsel. These opinions state unequivocally that the merger of Dodge into Emerson would be a tax-free merger under applicable provisions of the Internal Revenue Code. Dodge and Reliance say no more.

In our letter to you of July 31, 1967, we made the following pledge:

> "The merger proposal which Emerson has made to the Dodge Directors will be available after you reject the Reliance proposal on August 22."

THE EMERSON MERGER PROPOSAL IS A FIRM ONE. Why is it that, in the Reliance proposal, RELIANCE CAN

WALK AWAY FROM ITS MERGER should you, the Dodge shareholders, approve it, if in the "reasonable judgment" of the Reliance Board, the merger appears inadvisable? No set standards are furnished. The Dodge and Reliance Boards of Directors have not indicated in any way what percentage of dissenters would upset their deal. This is contrary to what appears in many merger agreements, including that offered by Emerson. In the Emerson agreement the merger may be terminated because of dissenters *only* if, by reason of the election of the Dodge stockholders to take dissenter's rights, or otherwise, the holders of less than 51% of the Dodge stock (excluding any shares of Dodge owned by Emerson) will receive the Emerson preferred stock on the merger exchange.

The Dodge Directors refused to approve the Emerson proposal on the ground that, having approved an agreement of merger with Reliance, they were "not in a position" to consider the Emerson proposal. After you reject the Reliance proposal, the Dodge directors will be in a position to submit the Emerson merger proposal promptly.

If you have previously voted in favor of the Reliance merger, you may revoke that vote by signing, dating and returning the enclosed Emerson BLUE proxy. Be sure to indicate by checkmark your vote "AGAINST" the Reliance merger, which is the first item, and "FOR" the Emerson proposal, which is the second item on the proxy card, and date the proxy card. You have every right to change your mind. Only the latest dated proxy counts.

Sincerely,

/s/ W. R. Persons,
W. R. Persons
Chairman of the Board

[Attachments omitted]

PLAINTIFF'S EXHIBIT 30.

Emerson Electric Co.
8100 Florissant Avenue
St. Louis, Mo. 66136

August 10, 1967

Dear Dodge Shareholder:

On August 4, 1967, J. Allan MacLean, President of Dodge, wrote to you urging that you accept the Reliance merger offer rather than the Emerson offer. Mr. MacLean attempted to assess your "future prospects" as a shareholder of Reliance or Emerson. He compared the sales and earnings of Reliance and Emerson respectively in 1962 and 1966 as a *"realistic"* and *"sound"* approach. This approach is in fact *Unrealistic* and *Unsound.*

Mr. MacLean did not select 1962 as a base year by pure accident. Rather, the year 1962 represents the lowest net earnings per share of Reliance during the past ten years, a year from which one would expect some major improvement.

For example, five years earlier, in 1957 Reliance earned $2.09 per share, almost equivalent to its current level of earnings. The net sales and net earnings of Emerson and Reliance respectively in *each* of the past ten years are as follows:

* * * * *

[Figures omitted]

You may well question whether Dodge management is being candid with you in suggesting that the "future prospects" of Reliance can in any sense compare with those of Emerson.

The market place is the best judge of the worth of a security and market price is the best evidence of its value and "future prospects". Each share of preferred stock which Emerson offers you for each Dodge share, converted as of the close of the market on August 4, was worth $81.56. Each share of preferred stock Reliance

offers you had a value on the same basis of only $64.40. *This is how the market evaluates the "future prospects" of the two companies.*

The following chart reflects the respective high and low market values of Reliance and Emerson common shares during each of the years since 1957. Even taking Mr. MacLean's five year period for comparison, Emerson's common stock has consistently out performed Reliance in terms of market value.

* * * * *

[Graph omitted]

Mr. MacLean says Emerson failed to tell you that these market values may "fluctuate". Market values do fluctuate. In fact, in the two weeks prior to Mr. MacLean's letter, this "fluctuation" has increased the spread in favor of the Emerson proposal from $13.67 per share (July 21) to $17.16 per share (August 4).

There can be no question that your directors considered Emerson a good merger partner. They even made a merger proposal earlier this year.

Mr. MacLean gives as an "important reason" for favoring the Reliance deal the fact that it pays 24¢ a year more in dividends per share than the Emerson proposal.

1) With a difference in effective market value as of August 4, 1967 of $17.16 per share, it would take you seventy years to catch up at 24¢ per year.

2) Do you want to wait seventy years to catch up? Even in seventy years you may not come out whole since the 24¢ a year is taxable currently at ordinary income tax rates. The $17.16 spread would not be taxable unless or until the stock was disposed of and then the tax would be at capital gains rates.

3) If in the meantime the company had to be liquidated on some involuntary basis, the value of the Reliance Preferred stock is fixed at $20.00 a share while the value of the Emerson preferred stock is $80.00 a share.

In our first letter to you, we stated:

"The directors of Dodge are asking you, in effect, to sell your investment in Dodge for less than the best price available."

This statement is even more true today than it was on July 31, 1967. It will continue to be true until you reject the Reliance proposal and call upon your directors to give you the opportunity to obtain the best price available for your investment in Dodge. Do not make a costly mistake. Rely on the facts. Vote the BLUE proxy "For" the Emerson shareholder resolution and "Against" the Reliance merger proposal.

You are urged to sign, date and return the enclosed BLUE proxy. If you have already returned a white proxy to Dodge, your signing the BLUE proxy on a later date will revoke it, and your vote will be cast in accordance with your wishes.

Sincerely

/s/ W. R. Persons
W. R. Persons
Chairman of the Board

PLAINTIFF'S EXHIBIT 31.

Emerson Electric Co.
8100 Florissant Avenue
St. Louis, Mo. 63136

August 16, 1967

To the Shareholders of
Dodge Manufacturing Corporation:

The special meeting of Dodge shareholders is just a few days away. This may be your last opportunity to express by proxy your preference between a Dodge-Emerson merger and a Dodge-Reliance merger.

The officers and directors of Dodge have decided to change Dodge from a small independent company to a

part of a larger organization. The decision you must make as a Dodge shareholder is whether you would have greater value from Emerson shares or Reliance shares.

As in all major decision-making, there are only a few key issues:

1. The first issue is the immediate value you will receive for your Dodge shares. On August 16th, the converted market value of the Emerson preferred was $16.19 more per share than the converted market value of the Reliance preferred. Measure this difference in current market value against the 24¢ in extra annual dividend per share offered by Reliance.

2. The second issue is the future growth in market value of Emerson shares as compared with Reliance shares. In looking at the future, the recent past is an excellent guide. The increase in market value of Emerson shares since 1957 has been 5.6 *times* the increase in market value of Reliance shares.

3. The third issue is the tax-free aspect of the merger. We have advised you that the Emerson merger proposal will be available to you after the August 22nd meeting on a tax-free basis. Emerson has applied for a tax ruling and, like Reliance, anticipates that the ruling will be favorable. If for any reason the Emerson merger should not receive a "tax-free" ruling, the Dodge management would be fully and legally authorized to refuse to consummate that merger, just as it is authorized to refuse to consummate the Reliance merger.

You will receive greater value for your Dodge shares by voting for Emerson. Time is short. Vote AGAINST the Reliance deal and FOR the Emerson resolution on the enclosed Blue Proxy. Only the latest dated proxy counts.

Very truly yours

/s/ W. R. Persons
W. R. Persons
Chairman of the Board

PLAINTIFF'S EXHIBIT 33.

Proxy statement dated November 15, 1967, issued by Reliance Electric Co. in connection with merger of Toledo Scale Corporation into Reliance.

* * * * *

GENERAL INFORMATION

On June 16, 1967 Emerson Electric Company ("Emerson") acquired 152,282 shares of Common Stock of Dodge Manufacturing Corporation ("Dodge") representing more than 10% of the outstanding shares of Dodge. Those shares were acquired pursuant to an invitation for tenders at a price of $63, with a 90¢ brokers' commission. Emerson has advised Reliance that, although definitive computations have not been made, Emerson's costs and expenses incurred in connection with the tender offer were such that the total cost per share to Emerson was substantially in excess of $63.90.

On August 28, 1967 Emerson sold 37,000 of its Dodge shares on the New York Stock Exchange at a price of $68 (before commission and other expenses of the sale) thereby reducing its holdings to less than 10% of the outstanding shares of Dodge. If Emerson did in fact realize profits on such sale, such profits may be recoverable by Reliance (as successor by merger to Dodge) under Section 16(b) of the Securities Exchange Act of 1934. Emerson has asserted that the profits, if any, realized upon such sale are not recoverable by Reliance under Section 16(b) as a matter of law, and Emerson has advised that it will resist any suit brought to recover alleged profits. Reliance believes that, on the basis of information presently available, Emerson may have realized some profit on such sale recoverable under Section 16(b). Reliance has not yet determined whether to bring litigation to recover any such profit. Such a determination will depend upon a review of all relevant factors, including the net amount of any profits that might be established, the likelihood of recovering such profits in the light of legal defenses that might be asserted by Emerson, the avowed intention of Emerson to

resist any attempt at recovery, and the cost, expense and management time required in connection with any such litigation.

On September 13, 1967 Emerson sold 115,282 Dodge shares to Dodge at a price of $69 per share. Reliance does not believe that Section 16(b) is applicable to such sale since Emerson was not then the holder of 10% or more of the outstanding shares of Dodge. Counsel for Emerson furnished its opinion to that effect and counsel for both Reliance and Dodge concurred in that opinon.

* * * * *

No. 68 C 87 (3).

IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF MISSOURI, EASTERN DIVISION.

EMERSON ELECTRIC CO.,

Plaintiff,

vs.

RELIANCE ELECTRIC COMPANY,

Defendant.

MEMORANDUM OPINION.

(Filed September 18, 1969.)

In this case, tried to the Court, plaintiff seeks a declaratory judgment concerning its liability, if any, to defendant for profits realized on the sale of certain stock. Defendant has counterclaimed for the amount of the profits. The issue of profits has been postponed pending the resolution of the issue of liability. We have diversity jurisdiction.

For determination is the construction and application of Section 16(b) of the Securities Exchange Act of 1934 (Section 78p(b), 15 U.S.C.) to the peculiar facts of this case. Most of the essential facts have been stipulated. On May 22, 1967, Emerson Electric Company invited tenders of up to 550,000 shares of Dodge Manufacturing Corporation common stock at a price of $63, reserving the right to purchase all shares tendered. As extended, the tender offer expired June 16, 1967. At that time, Emerson elected to purchase all of the tendered shares, a total of 152,282. These shares constituted 13.2% of the outstanding Dodge common stock. Prior to June 16, 1967, Emerson did not own any shares of Dodge common stock.

Shortly before the stock acquisition by Emerson, Dodge and Reliance Electric & Engineering Company (now Reliance Electric Company) had entered into an

agreement whereby Dodge was to be merged into Reliance. Emerson sought to prevent the merger, which needed stockholder approval, advocating instead a merger with Emerson. A stockholders' meeting to consider the merger proposal was called for August 22, 1967. A proxy fight ensued, the result of which was victory for Reliance. Shortly thereafter, but prior to the final approval of the merger by the Dodge directors, Emerson sold its Dodge holdings. It first sold 37,000 shares at $68 a share on August 28, 1967 to Goldman, Sachs & Company, investment brokers. Then, on September 11, 1967, it sold the remaining 115,282 shares at $69 to Dodge. Concededly, Emerson realized a substantial short-term profit on these sales even after deducting all of its expenses of purchase and sale.

Section 16(b) provides, inter alia, that any profit realized by the beneficial owner of more than 10% of certain equity securities from the purchase and sale (or sale and purchase) within any period of less than six months shall inure to and be recoverable by the issuer. The statute further provides:

> "This subsection shall not be construed to cover any transaction where such beneficial owner was not such both at the time of the purchase and sale, or the sale and purchase, of the security involved * * *."

The initial question for determination is whether Emerson was a beneficial owner of more than 10 per cent of Dodge common stock "at the time of the purchase" of such stock. Emerson states the question thusly: "Should the very purchase by which one, who prior thereto owns no securities of an issuer, becomes a 10% owner be counted in determining liability for insider short-swing profits?" It argues that in the context of the Act, the words "at the time of purchase" can mean only "before the purchase" and that since Emerson owned no Dodge securities prior to June 16, 1967, and had no access of "inside" information, it may not be subjected to Section 16(b) liability. We do not agree.

Passing for the moment Emerson's further contention that its acquisition of the stock was not a "purchase" within the meaning of the Act, we are convinced that "at the *time* of purchase" includes the time "simultaneously with" the purchase, so that a shareholder becomes subject to the provisions of Section 16(b) immediately upon (that is, at the very moment of) his acquisition of more than 10 per cent of the corporation's stock. This construction accords not only with the literal meaning of the language, but more importantly, best serves to effectuate the legislative purpose manifest in Section 16(b). Accord: *Stella v. Graham-Paige Motors Corporation,* D.C.N.Y., 104 F. Supp. 957, affirmed (on this point) 2 Cir., 232 F.2d 299, cert. den. 352 U.S. 831. See Cook & Feldman, Insider Trading Under the Securities Exchange Act, 66 Harvard Law Review 612, 631-632.

Emerson urges, however, that although the transaction by which it acquired more than 10 per cent of Dodge stock was in fact a "purchase" (and indeed, under any view, a cash acquisition of this nature, could not be otherwise) nevertheless it was not a "purchase" of the kind contemplated by Section 16(b). Its theory is that each case must be examined on its own peculiar facts (*Petteys v. Butler,* 8 Cir., 367 F.2d 538), and that since the only evidence of record is to the effect that Emerson had no access to and had not acquired "insider" information prior to the purchase, its acquisition of a 13.2 per cent interest was not one that could have lent itself to the practices Section 16(b) was enacted to prevent. Again, we do not agree.

We do not believe that Congress intended to exclude any transaction which is undeniably a purchase under any concept thereof. In the cases in which the facts were examined by the courts, the issue was whether a particular transaction which did not involve a purchase (or a sale) within the ordinary understanding of those terms, e.g. conversions and reclassifications of stock, was a purchase (or a sale) as defined by Section 3 of the Act. It was to aid in resolving problems of that nature that the courts

have created the following test or standard: "Every transaction which can *reasonably be defined as a purchase* will be so defined, if the transaction is of the kind which can possibly lend itself to the speculation encompassed in Section 16(b)" *Ferraiola v. Newman*, 6 Cir., 259 F.2d 342, 345. This is the test applied by the Eighth Circuit. *Petteys v. Butler*, 8 Cir., 367 F.2d 568.

Petteys involved a conversion transaction and the Court held that under the "unique facts" of that case the conversion of convertible preferred stock to common stock by non-controlling directors was not a purchase within the purview of the Act even though it might "represent a type of exchange of equivalents that can be read into a literal interpretation of the § 16(b) language of 'otherwise acquire' and 'otherwise dispose of'." What *Petteys* ruled is succinctly summarized by Judge Gibson as follows (367 F.2d, l. c. 356): "If no purpose is served by attaching the *artificial label* of 'purchase' to a transaction, when it has *none of the common indicia* of a purchase, no such label is demanded, nor will one be attached. This, we believe to be the correct law and it is the law to be applied by us to the facts of this case."

In the instant case, no artificial label of "purchase" is attempted. The transaction by which Emerson acquired the Dodge stock has all the "common indicia" of a purchase. Here, we do not have an "otherwise acquire" situation, but rather, a simple, conventional acquisition of stock for cash.

We hold that the transaction was a purchase under any view of the facts. By such purchase, Emerson "elected to become a statutory fiduciary," thereby becoming subject "to the disciplinary purpose of § 16(b)", *Western Auto Supply Company v. Gamble-Skogmo, Inc.*, 8 Cir., 348 F.2d 736, regardless of the actual availability or use of inside information. The possibility of insider abuse is inherent in every such transaction. The expressed purpose of the statute is to prevent the unfair use of information which *may* have been obtained by the beneficial owner. Clearly, Section 16(b) is applicable to Emerson's

August 28, 1967 sale for cash of 37,000 shares of Dodge stock.

The basis on which Emerson disclaims liability as to said sale is that it was "forced" to dispose of these shares because of the foregone conclusion that the Dodge-Reliance merger would be approved very shortly with the result that the consummation of the merger would, so it is claimed, be treated as a sale of the Emerson-held Dodge shares in exchange for shares of Reliance. We are not convinced that the exchange of shares incidental to the merger would necessarily involve a "sale" of the Dodge stock held by Emerson. The cases cited by Emerson on this point go no further than to hold that for purposes of the *anti-fraud* provisions of the Act, the acquisition of new stock for the old, resulting from a statutory merger, is deemed a purchase and sale. *Dasho v. Susquehanna Company,* 7 Cir., 380 F.2d 262. And see *SEC v. National Securities, Inc.,* 393 U.S. 453. Thus, in the *SEC* case, the Supreme Court noted that the meaning of particular phrases in statutes must be determined in context and that the same words may take on a different coloration in different sections of the securities laws. The Court stated, "We must therefore address ourselves to the meaning of the words 'purchase or sale' in the context of § 10(b). Whatever these or similar words may mean in the numerous other contexts in which they appear in the securities laws, only this one narrow question is presented here." And again, "Whatever the terms 'purchase' and 'sale' may mean in *other* contexts, here an alleged deception has affected individual shareholders' decisions in a way not unlike that involved in a typical cash sale or share exchange. The broad anti-fraud purposes of the statute and the rule would clearly be furthered by their application to *this* type of situation."

Hence, it is not at all certain that in the context of Section 16(b) the word "sale" would be construed to include the involuntary exchange by Emerson of the Dodge shares for those of Reliance pursuant to the merger. Inasmuch as such a transaction is an "otherwise dispose

of" situation, and not a typical or conventional sale, the rationale of *Petteys, supra,* would undoubtedly require an examination of the "unique" facts of the case to determine whether the purposes of Section 16(b) would be furthered by attaching the artificial label of "sale" to this type of situation. However, we need not decide whether Emerson would have been liable for Section 16(b) profits had it held the Dodge shares until the merger was consummated, since it did not do so and the question is now moot.

Reduced to its essentials, what Emerson is saying is that it should be permitted to retain its short-swing profits resulting from the cash sale of the 37,000 shares of stock, because otherwise it would have been required to account to Reliance for the short-swing paper profits it would have realized upon the consummation of the merger. Yet the very purpose of Section 16(b) is to prevent the retention of such short-swing profits. Under any view of the case, Emerson is liable for Section 16(b) profits on its sale for cash of the 37,000 shares of Dodge stock.

Less obvious is the resolution of the further question: Should Emerson be held accountable for the profits realized on the September 13 sale of its remaining 115,282 shares even though at that time (by reason of its prior disposition of the 37,000 shares) Emerson was the beneficial owner of less than 10% of Dodge shares. We have concluded that under the peculiar facts of this case, Section 16(b) is applicable to the September 13 transaction.

We are convinced that while Emerson was the beneficial owner of 13.2% of Dodge shares, it determined to dispose of its entire stock holdings pursuant to a plan whereby it hoped to avoid, to the extent possible, Section 16(b) liability for short term profits. The guidelines of the plan were formulated in a letter written by its counsel to its board chairman under date of June 26, 1967. In that letter, counsel discussed alternatives to a proxy contest with Reliance, "principally *how* to dispose of, *at a profit,* the shares of Dodge stock which Emerson now owns." He took note of the "uncertainty" whether the very pur-

chase whereby Emerson became the holder of more than 10% of the Dodge stock should be taken into account for Section 16(b) purposes and advised that "Emerson should proceed on the assumption that 16(b) does apply and *should seek to avoid its consequences.*" It was counsel's opinion that if a merger occurred, Emerson would be considered to have "sold" its Dodge shares for Section 16(b) purposes. On that premise, he outlined "*defensive* action against 16(b) possibilities" which in his opinion should be taken by Emerson: "The *initial* defensive step * * * is for Emerson to reduce its holdings of Dodge stock to less than 10%. This means the gift or sale * * * of 37,100 shares of Dodge stock owned by Emerson. From this point on, Emerson, no longer being a 10% stockowner of Dodge can sell the balance of its Dodge stock free of any 16(b) risks; provided, of course, the second sale is not *legally tied* in any way to the first sale."

Because of the manner in which this case was submitted, the facts were not fully developed, as they might have been through vigorous cross-examination. However, the actions of Emerson when viewed in the light of its counsel's letter, clearly bespeak the fact that although the two sales of Dodge stock were technically separate transactions and the second sale was not "legally" tied in any way to the first sale, the two sales were effected pursuant to a single pre-determined plan of disposition with the overall intent and purpose of avoiding Section 16(b) liability. Emerson's initial sale of 37,000 shares[1] was motivated solely by its desire to reduce its holding to just under 10% immediately prior to disposing of the balance of its shares in an attempt to escape Section 16(b) liability on the short-swing profits it contemplated would be made upon such remaining shares. Significantly, the negotiations with Reliance commenced just one day after Emerson agreed by telephone conversation to sell the

[1] An increase in the number of Dodge outstanding shares made it necessary to sell only 37,000 instead of 37,100 shares as suggested in counsel's letter in order to reduce Emerson's holdings to less than 10%.

initial 37,000 shares to Goldman, Sachs & Company, and the agreement for the sale was tentatively arrived at one week thereafter subject only to the formalizing of the understanding. The timing was not a happenstance. That the negotiations with Reliance for the sale of the Emerson-held Dodge shares were initiated by Reliance does not affect our conclusion that the two sales were in fact interrelated parts of a single plan. In fact, in his June 26 letter, Emerson's counsel had anticipated the possibility of a settlement under a negotiated agreement providing for the purchase of the Dodge shares owned by Emerson, the settlement to provide for a sale by Emerson of at least 37,100 of its Dodge shares before the merger was approved by the stockholders.

Looking through form to discern substance, we hold that in truth and in fact the two sale transactions were related parts of a single plan devised by Emerson to dispose of all its Dodge stock in an attempt to "avoid the consequences" of Section 16(b). Emerson may not thus insulate from Section 16(b) liability the short-term profits derived from its disposition of the Dodge stock. To sanction this two-step sale procedure would be to subvert the purposes of Section 16(b) and to produce a result plainly at variance with its manifest policy. Unless appearances are to control, rather than reality, we believe that for purposes of this case the "time of sale" should include the entire period during which a series of related transactions take place pursuant to a plan by which a 10% beneficial owner disposes of his stock holdings.

We do not question the good faith of Emerson or its counsel. What we do question is its right to excise 16(b) liability or "avoid its consequences" by utilizing a series of related transactions, some of which considered separately might be exempt, when the obvious substance of the transaction as to a whole is the disposition of its more than 10% beneficial interest.

We hold that Emerson is liable to Reliance, as the successor in interest to Dodge, for the net profits realized by Emerson from the sale of all its 152,282 shares of Dodge

stock. Counsel for Reliance are directed to submit a form of interlocutory declaratory judgment in accordance herewith.

The foregoing memorandum constitutes our findings of fact and conclusions of law on the issue of liability.

Dated this 18th day of September, 1969.

/s/ JOHN K. REGAN,
United States District Judge.

No. 68 C 87 (3)

IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF MISSOURI,
EASTERN DIVISION.

EMERSON ELECTRIC CO.,
Plaintiff,
vs.
RELIANCE ELECTRIC COMPANY,
Defendant.

INTERLOCUTORY DECLARATORY JUDGMENT.

(Entered October 9, 1969.)

This cause came on to be heard by the Court on the pleadings, the evidence presented at trial, and the written stipulation and briefs of counsel for the parties, and the Court, being fully advised in the premises, finds the facts and law to be as set forth in its memorandum opinion dated September 18, 1969 and, accordingly, it is

ORDERED, ADJUDGED AND DECREED:

1. That plaintiff Emerson Electric Co. is liable to defendant Reliance Electric Company for the net profits real-

ized by plaintiff from the sales of 152,282 shares of stock of Dodge Manufacturing Company on August 28 and September 13, 1967.

The Court is of the opinion and therefore finds that this order involves controlling questions of law as to which there is substantial ground for difference of opinion and that an immediate appeal from this order under Title 28 U.S.C.A. § 1292(b) may materially advance the ultimate termination of this litigation.

IT IS HEREBY FURTHER ORDERED that this matter be certified under Title 28 U.S.C.A. § 1292(b) and that all proceedings in this cause be stayed pending the final action of the United States Court of Appeals for the Eighth Circuit.

Dated this 9th day of October, 1969.

/s/ JOHN K. REGAN,
United States District Judge.

No. Misc. 632.

IN THE UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT.

EMERSON ELECTRIC CO.,
a corporation,
Plaintiff-Petitioner,
v.
RELIANCE ELECTRIC COMPANY,
a corporation,
Defendant.

PETITION FOR PERMISSION TO TAKE AN APPEAL FROM AN INTERLOCUTORY ORDER PURSUANT TO 28 U. S. C. SECTION 1292(b) AND RULE 5 OF THE FEDERAL RULES OF APPELLATE PROCEDURE.

* * * * *

I. *Statement of Facts*

This action was originally brought in the district court by Emerson as a declaratory judgment action, seeking a determination of its liability, if any, to Reliance for any profits Emerson may have realized as a result of its transactions in the stock of Dodge Manufacturing Corporation, an Indiana corporation ("Dodge"). The facts before the district court were mostly stipulated. Prior to June 16, 1967, Emerson owned no shares of stock of Dodge and had no relationship whatsoever to Dodge. On or about May 22, 1967, Emerson made an offer to purchase up to 550,000 shares of the common stock of Dodge, pursuant to an offer for tenders made to Dodge stockholders. Dodge made an unsuccessful attempt to enjoin the Emerson tender offer in Indiana federal court. On June 16, 1967, Emerson elected to purchase all of the shares tendered by the Dodge stockholders, and accordingly did at that time

purchase 152,282 shares of Dodge common stock at $63.00 per share. The shares so purchased represented 13.2% of the outstanding Dodge common stock.

At about the time of Emerson's acquisition of the Dodge stock, Dodge and Reliance, an Ohio corporation, entered into an agreement in principle to merge Dodge into Reliance. Emerson made a counter-proposal, the effect of which would be to merge Dodge into Emerson. On August 22, 1967, a meeting of the Dodge stockholders was called, at which the plan of merger with Reliance was adopted and the Emerson proposal was rejected.

Thereupon, with the Dodge-Reliance merger upcoming, Emerson concluded that, rather than remain a stockholder of Dodge and accept the securities of Reliance pursuant to the Dodge-Reliance merger, it would undertake to dispose of its 152,282 shares of Dodge stock in two separate and distinct transactions—first a sale of 37,000 shares, reducing its holdings to less than 10%, and second a sale of the balance.

Accordingly, on August 28, 1967, Emerson sold 37,000 shares of its Dodge stock to Goldman Sachs & Co., a New York investment banking firm, for $68.00 per share. This reduced Emerson's holdings in Dodge stock to less than 10%.

On September 13, 1967, Emerson sold the remaining 115,282 shares of Dodge stock to Dodge for $69.00 per share. On September 29, 1967, the Dodge-Reliance merger was consummated, with Reliance the surviving corporation.

The two sales were negotiated separately, at different times, by different representatives of Emerson, for different prices, to different purchasers having no connection or relationship with each other and, except for the fact that they were made pursuant to Emerson's decision to dispose of its entire holdings of Dodge stock upon the most favorable terms, were separate and distinct from each other in every respect.

* * * * *

No. 20014.

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT.

September Term, 1969

EMERSON ELECTRIC CO.,

Appellant,

vs.

RELIANCE ELECTRIC COMPANY,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI.

ORDER.

(November 6, 1969.)

The Court has considered petition for leave to take interlocutory appeal and answer in opposition thereto. Being fully advised in the premises, it is now here ordered that the petition for leave to take interlocutory appeal be, and it is hereby, granted.

The Clerk is directed to regularly docket this appeal.

No. 20,014.

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT.

EMERSON ELECTRIC CO.,

Appellant,

vs.

RELIANCE ELECTRIC COMPANY,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI, EASTERN DIVISION.

OPINION.

(November 12, 1970.)

Before GIBSON and LAY, Circuit Judges and HUNTER, District Judge.

HUNTER, District Judge.

This is an interlocutory appeal from a declaratory judgment holding that Emerson Electric Company is liable to Reliance Electric Company under Section 16(b) of the Security Exchange Act of 1934[1] for the net profits realized by Emerson from the sale on August 28, 1967, of 37,000 shares of the stock of Dodge Manufacturing Corporation and from the sale on September 13, 1967, of 115,282 shares of Dodge stock.[2] Only the issue concerning the amount of profits recoverable by Reliance has been reserved for future determination by the District Court.

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[1] 48 Stat. 896 (1934); 15 U.S.C. § 78(P).

[2] The District Court certified the case for interlocutory appeal under authority of 28 U.S.C. § 1292(b) with leave granted by this Court to take the interlocutory appeal.

The salient facts are relatively undisputed.[3] Toward the end of 1966, Emerson, a St. Louis based manufacturer of electric motors, became interested in Dodge of Mishawaka, Indiana, a company engaged in the manufacture of transmission equipment and other devices used with electric motors. Dodge was a publicly held corporation, and its stock was listed on the New York Stock Exchange. Emerson engaged in merger negotiations with Dodge. On March 12, 1967, Emerson was advised that Dodge's board had rejected Emerson's merger offer. On March 22, 1967, Emerson withdrew its merger proposal, terminated negotiations with Dodge, and so advised the financial community.

On May 22, 1967, Emerson invited tenders of up to 550,000 shares of Dodge's common stock at a price of $63 per share, the tender offer to expire June 16, 1967. At that time Emerson elected to purchase all of the 152,282 tendered shares. These shares constituted 13.2 percent of the outstanding Dodge stock. Prior to June 16, 1967, Emerson had not owned any shares of Dodge stock.

Shortly before the Dodge stock acquisition by Emerson, Dodge and Reliance Electric & Engineering Company (now Reliance Electric Company) had entered into an agreement whereby Dodge was to be merged into Reliance.[4] Emerson sought to prevent the merger, which needed stockholder approval, advocating instead a merger with Emerson.[5]

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[3] The parties stipulated to most of the essential facts prior to the trial, and the District Court has set them out in its opinion reported at 306 F.Supp. 588.

[4] The evidence indicates Dodge's management unexpectedly announced its intent to merge with Reliance.

[5] On May 27, 1967, Dodge filed suit in federal court in South Bend to enjoin Emerson from accepting any tenders and from further pursuing its tender offer. The District Court denied the injunction, finding in its memorandum opinion that Emerson did not have any "insider" information about Dodge and that all its knowledge about Dodge had been obtained from publicly available sources.

A stockholders' meeting to consider the merger proposal was called for August 22, 1967. A proxy fight ensued, the result of which was a victory for Reliance.[6] Shortly thereafter, but prior to the final approval of the Dodge-Reliance merger by the Dodge directors, Emerson sold its Dodge holdings. Emerson first sold 37,000 shares at $68 a share on August 28, 1967, to Goldman, Sachs & Company, investment brokers. This sale reduced Emerson's holdings to 9.96 percent of the then outstanding shares of Dodge. Then, on September 11, 1967, it sold the remaining 115,282 shares at $69 a share to Dodge.

The background of the two sales is that Emerson had been advised by its counsel by letter that Section 16(b) might apply if Emerson owned 10 percent or more of Reliance's stock at the time of a Reliance and Dodge merger; counsel further advised that Emerson reduce its holdings below 10 percent, and they advised that from that point on, Emerson, no longer being a 10 percent stockholder of Dodge, could sell the balance of its Dodge stock free of any 16(b) risk, "provided, of course, the second sale is not legally tied in any way to the first sale." [7]

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[6] Emerson made a counter-proposal in opposition to Reliance's merger offer and the Dodge board opposed it and refused to allow Emerson to examine the list of Dodge's shareholders. Emerson successfully filed suit to obtain the list.

[7] See, Lang & Katz, Liability for "Short Swing" Trading in Corporate Reorganizations, 20 Sw. L.J. 472, 486-87 (1966); Roger George, The Application of Section 16(b) to Mergers: A Hidden Hazard, 47 Tex. L. Rev. 1417 (1969).

The letter written ten days after Emerson had purchased its Dodge shares advised that in view of the uncertainty as to whether Emerson's purchases would be subject to Section 16(b) Emerson should seek to avoid 16(b) consequences by reducing its holdings to less than 10 percent by means of gift or sale prior to August 22, 1967, of 37,150 shares of Dodge stock; "[that] from this point on, Emerson, no longer being a 10 percent stock owner of Dodge, can sell the balance of its Dodge stock free of any 16(b) risk; provided, of course, the second sale is not legally tied in any way to the first sale." * * * "It may be possible at some-

(*Continued on following page*)

Emerson sold the mentioned 37,000 shares, reducing its holding to 9.9 percent of Dodge stock. On August 29, 1967, counsel for Reliance initiated discussions with counsel for Emerson to purchase the remaining 115,282 shares of common stock of Dodge from Emerson. Prior to this time Emerson had not offered to sell the 115,282 shares of Dodge to Reliance.

Based essentially on these facts, the District Court found that Emerson's two sales transactions were related parts of a single plan devised by Emerson to dispose of all of its Dodge stock in an attempt to avoid the consequences of Section 16(b), and held Reliance was entitled to the profits from both sales.[8] This appeal followed.

(*Continued from preceding page*)

time before the Dodge-Reliance merger vote to agree upon a settlement with these companies under a negotiated agreement providing for the purchase of the Dodge shares owned by Emerson and/or the Reliance preferred shares to be received if the Dodge-Reliance merger is effected. It seems necessary however, that any such settlement provide for a sale by Emerson of at least 37,100 of its Dodge shares before the August 22, meeting date."

[8] For the full reasoning of the District Court, see 306 F.Supp. 588, 591-593 (E.D. Mo. 1969), wherein it is stated, loc. cit. 592: ". . . although the two sales of Dodge stock were technically separate transactions and the second sale was not "legally" tied in any way to the first sale, the two sales were effected pursuant to a single pre-determined plan of disposition with the overall intent and purpose of avoiding Section 16(b) liability. Emerson's initial sale of 37,000 shares was motivated solely by its desire to reduce its holdings to just under 10% immediately prior to disposing of the balance of its shares in an attempt to escape Section 16(b) liability on the short-swing profits it contemplated would be made upon such remaining shares."

* * *

"Looking through form to discern substance, we hold that in truth and in fact the two sale transactions were related parts of a single plan devised by Emerson to dispose of all its Dodge stock in an attempt to 'avoid the consequences' of Section 16(b). . . . [W]e believe that for purposes of this case the 'time of sale' should include the entire period during which a series of related transactions take place pursuant to a plan by which a 10% beneficial owner disposes of his stock holdings."

Section 16(b) of the Securities Exchange Act

Section 16(b) reads:

> "For the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner, director, or officer by reason of his relationship to the issuer, any profit realized by him from any purchase and sale, or any sale and purchase, of any equity security of such issuer (other than an exempted security) within any period of less than six months, unless such security was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the issuer, irrespective of any intention on the part of such beneficial owner, director, or officer, in entering into such transaction of holding the security purchased or of not repurchasing the security sold for a period exceeding six months. * * * *This subsection shall not be construed to cover any transaction where such beneficial owner was not such both at the time of the purchase and sale, or the sale and purchase, of the security involved,* or any transaction or transactions which the Commission by rules and regulations may exempt as not comprehended within the purpose of this subsection." (Italics added.)

Thus, under the provisions of Section 16(b) owners owning more than 10 percent or more of the security of a company "*both at the time of the purchase and sale,* or the sale and purchase of the security involved" are accountable to the corporation for any profit realized on the security transactions made within a six month period.[9]

The initial question presented on this appeal is whether Emerson's purchase of 13.2 percent of the outstanding shares of Dodge's common stock, when prior to such purchase Emerson had not owned any Dodge securities, made

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[9] Section 16(a) reads: "Every person who is directly or indirectly the beneficial owner of *more than 10 per centum* of any class of any equity security (other than an exempted security) which is registered on a national securities exchange." (Italics added.)

Emerson at the time of that very purchase a more than 10 percentum beneficial owner within the meaning of Section 16(b).

It is Emerson's position that the exemption provision of Section 16(b) applicable to more than 10 percent beneficial owners specifically exempts any transaction where such beneficial owner was not such *both at the time of purchase and sale*, and that "at the time of" means "prior to" the purchase in question. However, Reliance contends that "at the time of" means "simultaneously with" the purchase in question. Both parties cite an array of text and Law Review commentaries which reflect there exists no unanimity on the part of legal scholars on the question presented.[10]

There is reasonable unanimity as to the *broad* purpose sought to be served by the enactment of Section 16(b). In one of the Congressional Committee Reports on the pending legislative act concerning the subject of the evils of certain "short-swing trading" it was declared that a purpose of 16(b) was "to protect the interests of the public against the predatory operations of directors, officers, and principal stockholders of corporations by preventing them from speculating in the stock of the corporations

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[10] For some examples, see: W. Painter, Federal Regulation of Insider Trading, Chpt. III, pp. 24-52 (1968); Note, Short-Swing Profits and the Ten Percent Rule, 9 Stan. L. Rev. 582 (1957); Note, Stockholder Acquiring 10% Ownership on Purchase Held Liable for Profits Under Section 16(b) of the Securities Exchange Act, 57 Colum. L. Rev. 287 (1957); Note, Director Held Liable Under Section 16(b) for Short Swing Profits on Stock Purchased Prior to His Becoming a Director, 45 Va. L. Rev. 1057 (1959); Note, Purchase of Stock By Which Stockholder Becomes a 10% Beneficial Owner is Covered by § 16(b), 70 Harv. L. Rev. 1312 (1957); Seligman, Problems Under the Securities Exchange Act, 21 Va. L. Rev. 1 (1934); Lowenfels, Section 16(b): A New Trend In Regulating Insider Trading, 54 Corn. L. Q. 45 (1968); Munter, Section 16(b) of The Securities Exchange Act of 1934; An Alternative to "Burning Down The Barn In Order to Kill the Rats," 52 Corn. L. Q. 69 (1966); Note, Insider Trading: The Issuer's Disposition of An Alleged 16(b) Violation, 1968 Duke L. Rev. 94; George, The Application of Section 16(b) To Mergers: A Hidden Hazard, 47 Texas L. Rev. 1417 (1969).

to which they owed a fiduciary duty." [11] While not unanimous, the majority of the text and law review writers, as well as the majority of the case decisions, appear to concede that the 16(b) statutory language "both at the time of purchase and sale" is not clear and has an element of ambiguity. As one writer expressed it, "at the time" is not a phrase of precise meaning. It may refer to a condition existing either "immediately before", "simultaneously with" or "immediately after" a given event. It is doubtful that Congress intended it to have one of those meanings in every situation. Therefore, without departing from the statute the words "at the time" might mean "immediately before" in the case of a purchase and "simultaneously with" in the case of a repurchase.[12]

Prior Decisions

In spite of the intense interest in the question, there is a paucity of judicial decision on the precise question presented on this appeal. It was the case of *Stella v. Graham-Paige Motors Corp.*, 232 F.2d 299 (2nd Cir. 1956), cert. den. 352 U.S. 831 (1956) affirming 104 F. Supp. 957 (S.D. N.Y. 1952) that provided the notable decision in the still continuing battle concerning proper interpretation of the Section 16(b) words "at the time of". The Second Circuit, in a two-to-one opinion rejected the defendant's contention that the proviso required the exclusion of a person who was not a 10 percent owner before each of the transactions involved. Instead, the Court based its decision on the interpretation of the proviso adopted by the district court and supported by the SEC in an amicus brief, that a 10 percent stockholder need only be such simultaneously with each transaction; that is, just after a purchase or just before a sale.[13]

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[11] S. Rep. No. 1455, 73d Cong., 2d Sess. 68 (1934). See also: 48 Stat. 881 (1934); 15 U.S.C. § 78.

[12] Note, Stockholder Acquiring 10% Ownership on Purchase Held Liable for Profits Under Section 16(b) of the Securities Exchange Act, 57 Colum. L. Rev. 287, 289 (1957).

[13] To the contrary, see, *Arkansas Louisiana Gas Co. v. W. R. Stephens Investment Co.*, 141 F.Supp. 841 (W.D. Ark. 1956).

Courts having the occasion to interpret the Securities Act with regard to questions other than the precise one we have before us have generally held that the Act should be liberally construed to carry out the express legislative policy.[14]

While the problem of interpretation is difficult and not free of all doubt, we are persuaded that in the case before us the District Court reached the right result in its holding that the purchase by which one becomes a more than 10 percentum stockholder, where followed by a sale within six months of some or all of the purchased security makes the purchaser a more than 10 percentum beneficial owner within the meaning of Section 16(b) "both at the time of the purchase and sale." We endeavor to give our reasons for reaching this result.

We are persuaded that the Congressional intent, albeit broad and not as clear as desirable, was to authorize recovery of any realized profit by directors, officers and certain large stockholders who engaged in short-swing transactions (six months or less) of sale and purchase or purchase and sale. The intent as to such short-swing transactions was to stop the *possible*, not the actual—for that was considered to be too difficult to prove—use of inside information.[15] It is clear that Section 16(b) applies

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[14] See *Cresswell-Keith, Inc. v. Willingham*, 264 F.2d 76, 80 (8th Cir. 1959). See, *Western Auto Supply Co. v. Gamble-Skogmo, Inc.*, 348 F.2d 736, 743 (8th Cir. 1965), where we stated, "The Supreme Court in *Blau v. Lehman*, 368 U.S. 403, 414, 82 S.Ct. 451, 7 L.Ed.2d 403 (1962), speaks of the 'prophylactic' effect Congress clearly prescribed in § 16(b). Other cases cited in this opinion refer to § 16(b) as being 'remedial', 'broadly remedial', 'thorough-going', and 'absolute' in strictly construing the statute against the insider in order to effectuate its wholesome purpose."

[15] Actual culpability is not required of the narrow class of persons to which Section 16(b) applies. As said by Judge Learned Hand in *Gratz v. Claughton*, 187 F.2d 46, 49-50 (2nd Cir. 1951), cert. den. 341 U.S. 920 (1951): "The section does indeed cover trading by those who in fact have no such information, ... If only those persons were liable, who could be proved to have a bargaining advantage, the execution of the statute would be so encumbered as to defeat its whole purpose." See,

(*Continued on following page*)

to every more than 10 percentum beneficial owner without regard to his factual access to or possession of inside information. The statute speaks only of more than 10 percentum beneficial owners and not of "insiders". It does not require inside knowledge or bad motive. It is also sufficiently clear that Congress intended that Section 16(b) apply to only those or only to that class recognized by the 16(b) statutory language as generally having the opportunity of obtaining inside information, and that more than 10 percent security holders were deemed by Congress to be of that class.[16]

Thus, to carry out the general purpose Congress sought by enactment of the statute, having in mind that at least to some degree that language is not free of ambiguity, we have concluded that the purchase by which a security holder acquires a more than 10 percentum status is included as a part of a pair of transactions of purchase and sale occurring within six months of each other within the meaning of Section 16(b). Any other view has the weakness of impracticability of application of the statute, a result we should not lightly attribute to a Congress striving to prevent what it considered to be highly undesirable speculations by certain security owners who are

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also, *Western Auto Supply Co. v. Gamble-Skogmo, Inc., supra* at 743, "We cannot have one rule for insiders with good intentions and another for those who would flagrantly abuse their trust. The burden of the Act must fall on all violations with equal weight." Thus, Section 16(b) is viewed as not penal requiring intent to misuse inside information but simply remedial to remove the right to retain profits obtained while in the advantageous position the statute describes.

[16] "The corporation is thus provided with a method of recoupment from insiders profits realized either through purchases of an equity security followed by its sale at a higher price, or from sale of an equity followed by a purchase at a lower price within the six month period. Once the statutory conditions have been fulfilled, it is irrelevant that the insider either did not make unfair use of inside information or that he might not have intended, at the time he purchased the security, to sell it within six months." Painter, Federal Regulations of Inside Trading, Chpt. III, pp. 24-25 (1968).

in position to obtain or to be exposed to that kind of inside information lending itself to speculative use to the possible detriment of the public.

Illustrative of some of the mischief that would be permitted in spite of Congress' action in enacting 16(b) if we accorded with Emerson's contentions is an initial purchase of as large a block of stock as 51 percent or more of a corporation's stock, followed by a sale any time within six months by the stockholder who obviously within that period could obtain much inside information and also could influence, manipulate or control corporate transactions. The deterrence of such apparent potential mischief must have been within the contemplation of Congress.[17]

Nor does the fact that Emerson acquired its stock in an effort to merge with Dodge and sold it after such merger appeared no longer possible exempt Emerson from the ambit of Section 16(b). An insider engaged in a contest for control of its stock issuer may have substantial opportunity for short-term profits perforce of its substantial stock ownership. In less than three months from its stock purchase Emerson apparently had made substantial short term profits related to its stock acquisition activities in its effort to gain stock control of Dodge.[18]

We reach the last question of the present appeal; namely, whether Emerson's sale of 115,282 shares of stock on September 13, 1967, within six months of its

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[17] One notorious example before Congress concerned brothers who within a short time before company passed a dividend sold their stock for $16,000,000 and after the dividend became public repurchased an equivalent amount for $7,000,000. See: S. Rep. No. 792, 73rd Cong., 2nd Sess. 9 (1934).

[18] See: Note, Insider Trading: The Issuer's Disposition of an alleged 16(b) Violation, 1968 Duke L.J. 94, 97. "Section 16(b) often imposes liability on the 'innocent' insider who has not abused his position since the unfair use of confidential information by insiders or the intent to profit by its use is irrelevant to the question of liability under section 16(b)." *Petteys v. Butler*, 367 F.2d 528 (8th Cir. 1966), cert. den. 384 U.S. 1006 (1967); *Smolowe v. Delendo Corp.*, 136 F.2d 231 (2 Cir. 1943), cert. den. 320 U.S. 751 (1943).

acquisition of 13.2 percent of Dodge's stock, but at a time when Emerson had reduced its stock holdings to below 10 percent of Dodge's stock, is a transaction where the beneficial owner was a more than 10 percent beneficial owner both at the time of the purchase and sale within the intendment of Section 16(b). The District Court found that while Emerson was the beneficial owner of 13.2 percent of Dodge shares it determined to dispose of its entire stock holdings pursuant to a plan whereby it hoped to avoid, to the extent possible, Section 16(b) liability for short term profits. Pursuant to that determination it made the mentioned two separate sales not tied in any legal way to each other.

Insofar as we are advised the question presented by the second sale is one of first impression. Our review of the record indicates the District Court's finding as a fact that Emerson made two separate sales not legally tied together in any way, with the described intent to avoid losing its profit on its second sale because of possible Section 16(b) applicability, is not clearly erroneous, and is supported by substantial evidence. The factual question as to whether a particular sale is a separate and independent sale is a matter for decision under the peculiar facts of the particular case. In this regard each case must stand or fall on its own facts.

However, there is no reason why a person may not conduct his business in such a way as to intentionally minimize or eliminate his loss of profits under Section 16(b) by any means permitted by law. Such conduct is to some extent analogous to tax avoidance conduct which is permissible.[19] We, therefore, do not fault Emerson for its

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[19] See *Helvering v. Gregory*, 69 F.2d 809, 810 (2nd Cir. 1934): ". . . A transaction, otherwise within the exception of the tax law, does not lose its immunity, because it is actuated by a desire to avoid, or, if one choose, to evade, taxation. One may so arrange his affairs that his taxes shall be as low as possible . . . ." On appeal, the Supreme Court affirmed saying: "The legal right of a taxpayer to decrease the amount of what otherwise would be his taxes, or altogether avoid them, by means which the law permits, cannot be doubted." *Gregory v. Helvering*, 293 U.S. 465, 469 (1934).

effort to avoid the total loss of profits on its 152,282 shares of stock by first reducing its holdings by means of a bona fide sale to below 10 percent, and then in a later, independent bona fide sale while owning less than 10 percent, dispose of its remaining shares.

Concededly, Congress through Section 16(b) did not endeavor to deny profits resulting from all insider transactions. Stock held one day more than six months before being sold escaped Section 16(b) regulation entirely. Stock amounting to a bare fraction less than the "more than 10 percentum" likewise escaped Section 16(b) entirely. The standards set forth in Sections 16(a) and 16(b) are arbitrary both in the selection of time, 6 months, and the selection of amount, more than 10 percentum. A security transaction either falls within or without the scope of Section 16(b) depending on whether these arbitrary standards are met.[20] A security holder such as Emerson does suffer some detriment albeit small in its two short-swing transactions in that it does lose its profit acquired from its first sale, made while it was a more than 10 percentum security holder. After that sale the arbitrary standards enacted by Congress in 16(b) of a "more than 10 percentum" security holder are no longer met, and subsequent sales appear to be free of Section 16(b) regulation. Such subsequent sales literally fall within the exemption language of 16(b): "[T]his subsection shall not be construed to cover any transaction where such beneficial owner was not such both at the time of the purchase and sale . . . ."

Since we have determined as a matter of law that intent as such to avoid loss of realized profits by engaging in two independent sales not legally tied to each other and

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[20] Some scholars note a recent trend to be more realistic and less formalistic in applying 16(b), especially in defining what is a sale, a purchase, and a transaction within the ambit of the Act. See, Lowenfels, Section 16(b): A New Trend In Regulating Insider Trading, 54 Corn. L. Rev. 45 (1968); *Petteys v. Butler*, 367 F.2d 528 (8th Cir. 1966), cert. den. 385 U.S. 1006 (1969); *Blau v. Lamb*, 363 F.2d 507 (2nd Cir. 1966), cert. den. 385 U.S. 1002 (1967).

made at different times to different buyers such as these described above, does not result in treating the two sales as one sale of the entire stock held, nor as one continuous transaction; we look to 16(b) to determine whether the second sale was a sale otherwise proscribed by that section. While we agree that Section 16(b) is to be broadly and liberally construed to achieve the intent of Congress, we are unable to discern from any of the Congressional hearings or from the broad basic purpose of 16(b) any intent on the part of Congress not to mean what it has literally said in the 16(b) exclusion clause, giving the words used in that clause a liberal and reasonably flexible meaning. We are not free under the guise of statutory interpretation to rewrite statutes so as to include matters which for unexpressed reasons Congress did not include.[21] We believe it clear that this second and independent sale of September 13 was not made at the time Emerson was a more than 10 percentum stockholder, whether the phrase "at the time of" be viewed as meaning immediately before, simultaneously with or immediately after the 10 percentum stockholder status. Hence, Emerson is not required to pay over to Reliance any profits realized from that sale.

Accordingly, we remand this cause to the District Court with directions to proceed in accordance with the views expressed herein.

IT IS SO ORDERED.

A true copy.

Attest:

Clerk, U. S. Court of Appeals, Eighth Circuit.

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[21] It is noteworthy the preamble was in none of the bills on which public hearings were held. The bill submitted to the House by the Committee on Interstate and Foreign Commerce completely omitted the future 16(b). The bill submitted by the Banking and Currency Committee to the Senate was the first to contain the preamble. See, S. Rep. 3420, 73rd Congress, 2nd Sess., 16(b) 1934; Note, Short-Swing Profits and the Ten Percent Rule, 9 Stan. L. Rev. 582, 586, N. 23 (1957).

No. 20014.

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT.

September Term, 1970.

EMERSON ELECTRIC CO.,

Appellant,

vs.

RELIANCE ELECTRIC COMPANY,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI.

ORDER.

(November 12, 1970.)

Appeal from the United States District Court for the Eastern District of Missouri.

This Cause came on to be heard on the record from the United States District Court for the Eastern District of Missouri and was argued by counsel.

On Consideration Whereof, it is now here ordered and adjudged by this Court that this Cause be and it is hereby remanded to the said District Court with directions to proceed in accordance with the views expressed in the opinion of this Court this day filed herein.